No. 15966

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner and Respondent,

vs.

MOUNTAIN PACIFIC CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS, INC., THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER, INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL NO. 242, AFL-CIO, and WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO,
Respondents and Petitioners.

Transcript of Record

Petition to Enforce and Petitions to Review Order of
The National Labor Relations Board

Phillips & Van Orden Co., Fourth and Berry Sts., San Francisco, Calif.—7-11-58

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

GENERAL COUNSEL'S EXHIBIT No. 1-H

United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. 19-CA-1374 — Mountain Pacific, Seattle, and Tacoma Chapters of the Associated General Contractors of America, Inc.,

and

Case No. 19-CB-424 — International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO,

and

Case No. 19-CB-445—Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO,

and

Cyrus Lewis, Charging Party.

CONSOLIDATED COMPLAINT

V.

In the year of 1955, the AGC Chapters, acting in concert, entered into a collective bargaining agreement with the Council, effective January 1, 1956, herein referred to as the 1956 Agreement. The AGC Chapters, in agreeing to, executing and promulgating said 1956 Agreement, acted for and in behalf of their respective employer members. The Council, in

General Counsel's Exhibit No. 1-H—(Continued) agreeing to executing and promulgating said 1956 agreement, acted for and in behalf of its member local unions, including Local 242.

VI.

The 1956 Agreement provides inter alia

"Recruitment of Employees

"6. To maintain employment, to preserve workable labor relations, to proceed with private and public work, the following accepted prevailing practices shall continue to prevail in the hiring of workmen:

"(a) The recruitment of employees shall be the responsibility of the Union and it shall maintain offices or other designated facilities for the convenience of the contractors when in need of employees and for workmen when in search of employment.

"(b) The contractors will call upon the Local Union in whose territory the work is to be accomplished to furnish qualified workmen in the classifications herein contained.

"(c) Should a shortage of workmen exist and the contractor has placed orders for men with the Union, orally or written, and they cannot be supplied by the Union within forty-eight (48) hours, Saturdays, Sundays and holidays excluded, the contractor may procure workmen from other sources.

"(d) Either party to this Agreement shall have the right to reopen negotiations pertaining to Union security by giving the other party thirty (30) days written notice, when there is reason to believe that

General Counsel's Exhibit No. 1-H—(Continued)

the laws pertaining thereto have been changed by Congressional Amendments, Court Decisions, or governmental regulations."

The "contractors" and the "Local Union" referred to in the 1956 Agreement were the employer members of the AGC Chapters and the member local unions of the Council respectively.

VII.

At all times since January 1, 1956, the AGC Chapters and their respective employer members and the Council and its member local unions, including Local 242, have published, maintained and continued in effect the 1956 Agreement with respect to the wages, hours, and working conditions of persons employed by the employer members of the AGC Chapters as hodcarriers, building and common laborers, and in the selection of such persons for hire.

VIII.

While the 1956 Agreement was being continued in effect, at all times since January 1, 1956, Local 242 and the Council were labor organizations which were obligated to procure employment for their members in preference to non-union men.

IX.

While the 1956 Agreement was being continued in effect, at all times since January 1, 1956, Local 242 and the Council, in the conduct of the functions of each of them, particularly with respect to the re-

General Counsel's Exhibit No. 1-H—(Continued)

cruitment of applicants for employment and in dispatching applicants to available jobs, have given preference to applicants who are members of said labor organizations.

X.

Lewis, during the six-month period prior to his filing charges herein, and since then, has sought employment in the Seattle area as a hodcarrier, building and common laborer. Lewis repeatedly reported his availability for work at the hiring hall of Local 242, where employee members of Local 242 were being dispatched to fill jobs in the aforesaid classifications with employer members of the AGC Chapters. Prior to filing his charges herein, Local 242 refused to dispatch Lewis for such employment and denied him employment opportunities in numerous instances when jobs with the employer members of AGC Chapters were available and unfilled. Since filing his charges herein, Local 242 has dispatched Lewis to jobs intermittently, using these occasions to induce Lewis to withdraw his charges.

XI.

The AGC Chapters, during the six-month period prior to the filing of charges by Lewis, and since then, (1) by continuing the 1956 Agreement in effect with the Council, wherein it was provided that member local unions of the Council were to function as the employment recruiting office and hiring hall of the employer members of the AGC Chapters, in the absence of providing affirmative

General Counsel's Exhibit No. 1-H—(Continued)
assurances against discrimination in the selection of employees for hire, and by continuing the 1956 Agreement in effect with labor organizations which (2) were obligated to give preference to their members in dispatching applicants for employment, and (3) did give such preference to their members, have been and are fostering and establishing hiring practices among the employer members of the AGC Chapters which have discriminated with respect to the hire of Lewis and other non-union workmen, to encourage membership in a labor organization in violation of Section 8 (a) (3) of the Act, and thereby have been and are interfering with, restraining and coercing employees and applicants for employment in the exercise of their right as guaranteed in Section 7 in violation of Section 8 (a) (1) of the Act.

XII.

The Council, during the six-month period prior to the filing of charges by Lewis, by continuing the 1956 Agreement in effect under the circumstances and in the manner specified in Paragraph XI, has been and is fostering and establishing hiring practices which caused the employer members of the AGC Chapters to discriminate with respect to Lewis and other non-union workmen to encourage membership in a labor organization, as proscribed by Section 8 (a) (3) of the Act, in violation of Section 8 (b) (2) of the Act, and by such deprivation of employment said Council has been and is coercing and restraining employees and applicants for

General Counsel's Exhibit No. 1-H—(Continued)
employment in the exercise of their rights as guaranteed in Section 7 in violation of Section 8 (b) (1) (A) of the Act.

XIII.

Local 242, since January 1, 1956, by continuing the 1956 Agreement in effect in governing the functions of Local 242 under the circumstances and in the manner specified in Paragraph XI, and by invoking its provisions when administering it, and by the conduct of Local 242 with respect to Lewis as described in Paragraph X, has been and is causing employer members of the AGC Chapters to discriminate as proscribed by Section 8 (a) (3) in violation of Section 8 (b) (2) of the Act, and by such conduct and in refusing Lewis job opportunities Local 242 has been and is coercing and restraining employees in the exercise of their rights as guaranteed in Section 7 in violation of Section 8 (b) (1) (A) of the Act.

* * * * *

/s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
Region 19, 407 U. S. Court House, Seattle 4, Wash.

[Title of Board and Causes.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

This proceeding was initiated by three charges

filed by Cyrus Lewis with the National Labor Relations Board (also referred to below as the Board). The first was filed on May 11, 1956, in Case No. 19-CB-424 against the Respondent, International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO (also referred to herein as Local 242); the second on August 7, 1956 in Case No. 19-CA-1374 against the Respondents, Mountain Pacific Chapter of the Associated General Contractors, Inc., The Associated General Contractors of America, Seattle Chapter, Inc., and Associated General Contractors of America, Tacoma Chapter (also referred to herein collectively as the AGC Chapters or the Chapters, and respectively as the Mountain Pacific Chapter, the Seattle Chapter, and the Tacoma Chapter;[1] and the third on September 13, 1956 in Case No. 19-CB-445 against the Respondent, Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO (also described herein as the District Council). On September 20, 1956, pursuant to the Board's Rules and Regulations, Series 6, the Regional Director of the Nineteenth Region of the Board duly entered an order consolidating the three cases. Based upon the charges, the General Counsel of the Board issued a complaint on September 20, 1956, alleging that

[1] Based upon a stipulation of the parties, filed with me subsequent to the hearing, I amend the record, including the caption of this proceeding, to show the correct names of the Chapters which are those set out above. The stipulation is hereby made a part of the record.

Local 242, the District Council, and the AGC Chapters had engaged, and were engaging, in unfair labor practices within the meaning of the National Labor Relations Act, as amended (61 Stat. 136-163), also referred to below as the Act. Each of the said Respondents has been duly served with a copy of the charge applicable to it; of the order of consolidation; and of the complaint.

With respect to the claimed unfair labor practices, the complaint alleges, in sum, that the AGC Chapters have interfered with, restrained and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act, thus violating Section 8 (a) (1) of the Act; that Local 242 and the District Council, as labor organizations, have caused employers to discriminate against Lewis and others in violation of Section 8 (a) (3), thus violating Section 8 (b) (2) of the Act; and that by such conduct the said labor organizations have restrained and coerced employees in the exercise of rights guaranteed them by Section 7, thus violating Section 8 (b) (1) (A) of the said Act.

Each of the Respondents has filed an answer in which it denies the commission of the unfair labor practices imputed to it in the complaint.

Pursuant to notice duly served upon all parties, a hearing was held before me, as duly designated Trial Examiner, on October 26 and 27, 1956, at Seattle, Washington. Each of the parties, with the exception of Lewis, was represented by counsel at the hearing. The parties were afforded a full opportunity to be heard, examine and cross examine wit-

nesses, adduce evidence, file briefs, and submit oral argument. I reserved decision on a motion, made after the close of the evidence by Local 242 and the District Council, to dismiss the allegations of the complaint applicable to them. The findings and conclusions made below dispose of the motion. The General Counsel and the Seattle and Tacoma Chapters have filed briefs which have been read and considered. The other parties have waived their right to file briefs.

Upon the entire record, and from my observation of the witnesses, I make the following:

Findings of Fact

I. Nature of the business of the AGC Chapters; their status as employers; jurisdiction

Each of the AGC Chapters is a corporate association of employers who are engaged, as contractors, in the construction business and have their principal places of business in the western part of the State of Washington. The respective principal offices of the Mountain Pacific and Seattle Chapters are located in Seattle, Washington. The Tacoma Chapter maintains its principal office in Tacoma, Washington.

Each of the Chapters, for and on behalf of its members, performs the function of negotiating and entering into collective bargaining agreements with labor organizations. These agreements prescribe wages, hours and conditions of employment affecting individuals employed by such members. The

Chapters customarily negotiate and enter into such agreements jointly, conducting the negotiations through a group of individuals made up of members of a labor committee maintained by each of the Chapters. This procedure was followed in 1955 in negotiating a collective bargaining agreement currently in effect between the AGC Chapters and the District Council. (More specific reference will be made to this contract below.) By reason of the representative status of the AGC Chapters and their joint procedures in negotiating and executing collective bargaining agreements, the Chapters and their members constitute a single employer within the meaning of Section 2 (2) of the Act. The assertion of jurisdiction over the subject matter of this proceeding may thus properly be based upon the operations in, or affecting, interstate commerce of members of any or all of the Chapters.[2]

In 1955, members of the Seattle Chapter performed construction work of the aggregate value of $26,586,361 for enterprises which annually ship goods valued in excess of $100,000 in interstate commerce. During that year, members of the Seattle Chapter performed work of the aggregate value of $23,431,353, under contract with the United States Government, on installations directly related to the national defense. In 1955, also, members of the Seattle Chapter performed construction work of the total value of $20,773,717 on construction projects located outside the State of Washington.

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[2] Insulation Contractors of Southern California, Inc., 110 NLRB 638, and cases cited.

The aggregate dollar volume of construction work performed by members of the Tacoma Chapter in 1955 in each of the three categories set forth above for members of the Seattle Chapter amounted to approximately one-third of the dollar volume of work performed by members of the Seattle Chapter in each such category. At the time of the hearing in this proceeding, a member of the Mountain Pacific Chapter was engaged in construction work on installations directly related to the national defense, and located outside of the State of Washington, under a contract with the United States Government providing for the payment of $6,000,000 for the work required by the agreement.[3]

In sum, members of the AGC Chapters have been, at all times material to this proceeding, engaged in interstate commerce within the meaning of the Act; the operations of the AGC Chapters and their members have affected, and affect, such commerce;[4] the Board has jurisdiction over this proceeding; and the assertion of its jurisdiction will effectuate the policies of the Act.

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[3] The record contains additional evidence that members of the Mountain Pacific Chapter engage in operations affecting interstate commerce of sufficient scope to meet criteria promulgated by the Board for the exercise of its jurisdiction. It is unnecessary to deal with such evidence, since the figures given above amply warrant the assertion by the Board of jurisdiction over this proceeding.

[4] Maytag Aircraft Corporation, 110 NLRB 594; Insulation Contractors of Southern California, Inc., supra; and Jonesboro Grain Drying Cooperative, 110 NLRB 481.

II. The labor organizations involved

The District Council is comprised of various local unions, including Local 242, affiliated with the International Hodcarriers, Building and Common Laborers of America, AFL-CIO (also referred to below as the International). The District Council, on behalf of Local 242 and other affiliates of the International, has negotiated and entered into collective bargaining agreements with the AGC Chapters, prescribing wages, hours of employment, and other working conditions of employees of members of the Chapters. One such agreement, to which additional reference will be made later, is currently in effect. Local 242 admits to membership employees of members of the Chapters and represents such employees for the purposes of collective bargaining. Both the District Council and Local 242 are labor organizations within the meaning of Section 2 (5) of the Act.

III. The alleged unfair labor practices

A. Prefatory statement

On December 30, 1955, the AGC Chapters, "acting for and on behalf of their members," jointly entered into an agreement with the District Council, prescribing wages, hours of employment, and other working conditions of individuals employed by members of the Chapters. The District Council negotiated and entered into the contract for and on behalf of various affiliates of the International, including Local 242. By its terms, the agreement became effective on January 1, 1956, and is to remain

in effect (subject to various provisions for modification not relevant here) until at least December 31, 1958.

One of the issues in this proceeding focuses upon the legality of Section 6 of the contract, which provides:

6. To maintain employment, to preserve workable labor relations, to proceed with private and public work, the following accepted prevailing practices shall continue to prevail in the hiring of workmen:

(a) The recruitment of employees shall be the responsibility of the Union[5] and it shall maintain offices or other designated facilities for the convenience of the Employers when in need of employees and for workmen when in search of employment.

(b) The Employers will call upon the Local Union in whose territory the work is to be accomplished to furnish qualified workmen in the classifications herein contained.

(c) Should a shortage of workmen exist and the Employer has placed orders for men with the Union, orally or written, and they cannot be supplied by the Union within forty-eight (48) hours, Saturdays, Sundays and holidays excluded, the Employer may procure workmen from other sources.

(d) Either party to this Agreement shall have

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[5] The term "Union", as used in the agreement, refers to the District Council and the local unions to which the contract is applicable. In that connection, see the opening paragraph of the agreement (G. C. Exh. 4).

the right to reopen negotiations pertaining to Union security by giving the other party thirty (30) days written notice, when there is reason to believe that the laws pertaining thereto have been changed by Congressional Amendments, Court Decisions, or governmental regulations.

The membership of Local 242 consists of approximately 1700 building and common laborers and some 70 hod carriers. Since the execution of the agreement with the AGC Chapters, as well as for many years prior thereto, Local 242 has maintained a hiring hall at its office in Seattle for the purpose of dispatching laborers and hod carriers to jobs at the request of employers engaged in the construction industry within the territorial jurisdiction of the union. Members of Local 242 seeking dispatch as laborers sign a registry book maintained by the union at its office, are given a number, and are usually sent to jobs by the organization's dispatcher in numerical rotation, unless an employer requests the assignment of a specific individual, in which event, the workman so requested is sent to the job involved. Laborers who are not members may also register, but they place their names in a different part of the registry book and are dispatched in numerical rotation only after all available members who hold registry numbers have been dispatched. Local 242 has no systematized procedure for dispatching hod carriers. No registry is maintained for them. In some cases, the dispatcher assigns an available hod carrier because he has been out of work longer than others; in other situations, those

awaiting assignment at the office decide among themselves who is to be dispatched. Generally, if an available hod carrier wishes it, he will be chosen for dispatch to a job with a contractor for whom he has worked before, and, as in the case of laborers, the union will dispatch a hod carrier member to a job, without regard to other factors, if an employer requests the assignment of the individual. Local 242 has had occasion to dispatch hod carriers who are not members of the organization, but the practice has been to do so only on occasions when no members are available for dispatch. In connection with the hiring hall practices described above, it may be noted that the dispatcher is obligated, under the terms of the International's constitution, to do all in his "power to procure employment for such brothers (members) as may desire situations in preference to any and all non-union men."

Cyrus Lewis, the charging party in this proceeding, has been a hod carrier by occupation for about 20 years. He became a member of Local 242 in 1943; was subsequently suspended at one point or another for non-payment of dues; was reinstated in 1947; was suspended again in or about 1949 for non-payment of dues; and was dropped from membership at some point thereafter in 1949 or 1950. He was unable to work as a hod carrier much of the time during the next few years because of physical disability, but from time to time when he felt able to work, he sought dispatch as a hod carrier at the union's hiring hall. On these occasions, the union declined to dispatch him.

Lewis' physical condition improved early in 1956,[6] and on or about March 15 of that year, he came to the hiring hall and asked Leo Allman, the union's corresponding secretary and dispatcher, and Robert Buchanan, the organization's financial secretary and business representative, to dispatch him to a job. Both Allman and Buchanan told him that no work was available. Lewis sought work at the hiring hall two or three times each week during the next seven or eight weeks, and met with the same result, both Allman and Buchanan telling him repeatedly that there was no work. Because of climatic and related factors, the period was a slack season for hod carriers (as is the spring of each year until about the middle of May). However, notwithstanding the season and the statements made to Lewis to the effect that no work was available, hod carriers were dispatched to jobs from the union's hiring hall, some repeatedly, on a substantial number of occasions during the months of March, April and May 1956, while Lewis was at the union's office seeking, and failing, to secure dispatch. Contrary to a claim advanced by Allman in his testimony, the evidence does not credibly establish that the hod carriers dispatched were specifically requested by the employers to whose projects they were sent.[7]

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[6] Unless otherwise stated, all events described below took place in 1956.

[7] Allman stated that as far as he could recall, the only hod carriers dispatched during the slack season prior to May 17 were those who were specifically requested by contractors. However, he later contra-

During the spring of 1956, Lewis made a number of efforts to secure reinstatement to membership in Local 242, while he was at the union's hiring hall seeking work. Thus on April 3, he told Buchanan that he wished to become a member of the union, and offered to "pay some dues." Buchanan suggested that Lewis discuss his request with Allman. Lewis did so, and Allman stated that he would take no money from Lewis, that "there weren't any jobs," and that he "wouldn't take any new members." Buchanan took substantially the same position as Allman on a number of other occasions when Lewis told Buchanan that he wished to be reinstated to membership.

On the morning of May 9, 1956, while on his way home from an unsuccessful quest for work at the hiring hall, Lewis secured employment for the balance of the day from a man named Albert Nielsen in connection with the moving of a building. Niel-

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dicted himself on that score, and at still another point stated that he could not remember whether, during the period in question, the only hod carriers dispatched were those who were specifically requested by contractors. Moreover, at various points, tangential or unresponsive answers by Allman persuaded me that he was being evasive. In some instances, Allman made no response to questions put to him, and, upon appraisal of his demeanor, it appeared to me that this was attributable to a desire by him to avoid answering rather than to a lack of understanding of the questions involved. In contrast, Lewis impressed me as a credible witness, and I have thus based findings herein on Lewis' testimony with respect to what he observed at the hiring hall and his conversations and transactions with Allman.

sen, who is engaged in the business of moving buildings, is not a member of any of the AGC Chapters. Shortly before quitting time that day, Buchanan appeared at the project, and observing that Lewis was employed there, told Nielsen that he would place a picket line at the project unless Nielsen hired only union members for the work in progress there. Lewis continued to work the short period remaining until quitting time and was then paid off by Nielsen who had planned to employ Lewis at the project only for the day.

On May 14, Lewis went to the office of Local 242 and asked Allman to dispatch him to a job. Allman replied that he had heard that Lewis had filed a charge against Local 242; that the union was not going to give Lewis "a damned thing"; and that the latter was to "get out and stay out." Lewis reported the incident later that day to a field examiner stationed in the Seattle regional office of the Board. The field examiner thereupon telephoned Buchanan. During the course of the conversation, Buchanan suggested that the field examiner tell Lewis to come to the office of Local 242 and inform the union whether he desired dispatch as a hod carrier or a common laborer. (The record does not establish what, if anything, else was said.)

Lewis visited the hiring hall on the morning of the following day and asked Allman to dispatch him. Allman replied that no work was available, but stated that he might be able to send Lewis to a job later that day if one turned up, and that Lewis should "stick around." That morning, also,

Buchanan asked Lewis if he wished "to take out a number as a common laborer," and Lewis replied that he preferred to be dispatched to a hod carrier's job. Lewis was not dispatched on that day, nor on the following day when he came to the hiring hall and asked Allman for a job.

Lewis came to the hiring hall again on May 17, arriving there at about 6:45 a.m. He was the first hod carrier there. Some four or five hod carriers arrived about 15 minutes later. These were dispatched first during the course of the morning, although Lewis stationed himself at the dispatcher's window as soon as Allman arrived. After dispatch of the others, Lewis continued to wait for some time at the union's office. At about 10:30 a.m., Lewis became aware that Allman required a hod carrier for dispatch "for some brick job" at an establishment described in the record as Todd's Shipyard. Lewis, who was then the only available hod carrier at the hiring hall, approached Allman and told him that he wished to be dispatched to the job. Allman said that the job was not one for a hod carrier and that the opening was not at the shipyard. Shortly thereafter, a hod carrier came into the union office, and Allman dispatched him to the shipyard. At one point or another that morning, after various hod carriers had been dispatched, Lewis telephoned the field examiner mentioned above and reported that he had not been dispatched and that he had been given no job assignment. The field examiner thereupon called the hiring hall and, talking either to Buchanan or Allman, told one or the other that he

had been informed that Lewis "was not being sent out." Shortly after the call, Allman, stating that he would dispatch Lewis, told the latter that he wanted him to withdraw the charge. Lewis replied that he would see what he could do in that regard, and Allman thereupon dispatched him to a job which lasted a few days.

On May 23, having completed the work to which he had been dispatched, Lewis presented himself at the hiring hall and asked Allman for another dispatch. The latter inquired of Lewis whether he had withdrawn the charge, and upon receiving a negative reply, remarked to Buchanan who was present that "Lewis didn't do what we told him to do." Buchanan said, "* * * the hell with him," and then Allman told Lewis: "You didn't go down and withdraw the charge like I told you to so you can get out and stay out as far as I am concerned."

Nevertheless, Lewis came to the hiring hall on the following day and asked Allman to dispatch him. Allman refused, stating that he had previously dispatched Lewis on the assumption that the latter would withdraw the charge, and that Lewis would not be dispatched again until he withdrew it. During the next several weeks, Lewis repeatedly went to the hiring hall seeking dispatch, but he was unsuccessful. Allman told him on these occasions that no work was available. On June 13, however, Allman dispatched him to a job which lasted for about a week.

On June 21, after completion of that job, Lewis made a request of Allman that he be admitted to

membership in Local 242, offering to pay what he understood to be the required initiation fee. (Lewis had heard that the fee was $37.50, and he had enough funds on his person to pay that sum.) Allman's reply to the offer was that he would not take any money from Lewis "until I get a statement from the Board that you have withdrawn the case."

Several weeks later, on July 11, Allman dispatched Lewis to a job which lasted until August 6. On August 8, Lewis asked Allman for another dispatch, and repeated his offer "to pay some money" toward admission to membership in the union. Allman again rejected the offer, asserting that he would take no money from Lewis until he received a letter from the Board stating "that the case had been dropped." Lewis, however, continued to return to the hiring hall for dispatch, and was sent to a job by Allman some days later. Since then he has been securing work through the hiring hall with substantial regularity.

On August 18, Lewis made another attempt to become a member of Local 242, broaching the subject to Allman at the dispatch window in the hiring hall. This time, unlike the previous occasions, Allman invited Lewis into the office behind the window for a discussion of the matter. The dispatcher again declined to take any money from Lewis, but said that he would give Lewis a "slip as good as a (union membership) book," and that the slip would be valid until the following September 18. Allman thereupon signed and gave Lewis a printed form bearing the caption "Official Receipt," and contain-

ing an entry signifying that it was to be valid until September 18. (From the material printed on the form, it is evident that the union uses slips of this type to acknowledge payment of initiation fees and dues by its members.) Lewis remarked that "my business here is to pay some money," and asked Allman whether he would be required to pay any sum for the slip. The dispatcher assured him that he would not "have to pay a nickel."

During the following week, Lewis worked at a project to which Allman had dispatched him. Some time during the course of the week, Allman visited him at the project, and asked him whether he had withdrawn the charge. Lewis replied that he had discussed the subject with the Seattle regional office of the Board and had been informed there that the matter was out of his hands, and that the charge would not be dismissed.

Allman made another effort to persuade Lewis to withdraw the charge shortly after the expiration date of the "Official Receipt," visiting Lewis for that purpose at another project where the latter was employed. In the course of the discussion, Allman told Lewis that "other cases had been filed against the union"; that "we have given the boys work and they have withdrawn the cases"; and that he had come to the project to "see if you would withdraw the case, if you want to keep working." The dispatcher asked Lewis whether he would "sign a paper" stating that he wished to withdraw the charge, in order to "prove" that he had "tried to withdraw" it. Lewis replied that he had been told

at the regional office that the matter was out of his hands; that he preferred that Allman "call up and talk to some officials up there"; and that there was nothing else that he could do about the matter.

B. Concluding findings

The General Counsel contends that Section 6 of the agreement described above contains provisions that are invalid per se. In that regard, it is alleged in the complaint that "by continuing (the agreement) in effect,"[8] the AGC Chapters have been interfering with, restraining and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, thus violating Section 8 (a) (1) of the statute; and the District Council and Local 242 have been causing employer members of the Chapters to discriminate in violation of Section 8 (a) (3) of the Act, thereby violating Sections 8 (b) (2) and 8 (b) (1) (A) of the Act.[9] As the

[8] The complaint does not allege the execution of the agreement, as distinguished from its maintenance, as a violation of the Act. So far as the District Council and the AGC Chapters are concerned, such an allegation is barred by Section 10 (b) of the Act, since the agreement was executed more than six months prior to the filing of the respective charges against these Respondents.

[9] The complaint does not charge that by maintaining Section 6 of the agreement, the Chapters discriminated in violation of Section 8 (a) (3) of the Act (see Par. XI of the complaint), although it alleges that by maintaining the relevant contract provisions, the District Council and Local 242 have caused members of the Chapters to discriminate in violation of Section 8 (a) (3).

General Counsel asserts that the contract terms in question are unlawful per se, the validity of the claim must be tested by reference to the relevant language alone, and without regard to the contention, also advanced by the General Counsel, that members of the AGC Chapters have actually discriminated "with respect to the hire of Lewis," and that Local 242 caused such discrimination. The claim of actual discrimination against Lewis, and the question of the responsibility therefor of Local 242, will be separately considered at another point below.

For support of his position concerning Section 6 of the agreement, the General Counsel relies upon Pacific Intermountain Express Company, 107 NLRB 838, enforced as modified, 225 F. 2d 343 (C.A. 8). [10] There the Board considered the legality of certain seniority provisions of two collective bargaining contracts, one made in 1949 and the other in 1952. The relevant language of the first provided that "any controversy over the seniority standing of any employees on this list shall be referred to the Union for settlement." The later agreement contained the same language, but provided, in addition, that "such determination shall be made without regard to whether the employees

[10] The General Counsel also cites and relies upon the later case of North East Texas Motor Lines, Inc., et als., 109 NLRB 1147, enforced as modified, 228 F. 2d 702 (C.A. 5). In that case, the Board held invalid contractual provisions substantially similar to those involved in the Pacific Intermountain Express case.

involved are members or not members of the Union." Overruling a contrary position taken by it in an earlier case (Firestone Tire and Rubber Company, 93 NLRB 981), the Board held the delegation to the union of "complete control over the determination of seniority" to be unlawful per se, and that as a result of agreeing to, and maintaining, the relevant contract provisions, the employer involved had violated Sections 8 (a) (1) and 8 (a) (3), and the union Sections 8 (b) (1) (A) and 8 (b) (2). The Board stated the reasons for its holding as follows (p. 845):

The objective standards relevant to a determination of seniority generally derive from the employment history of the employees involved, and that information is, as a rule, peculiarly within the knowledge of the employer. Indeed, the area in which the union is likely to be more informed than the employer with respect to the employer's employees is that pertaining to employees' union membership or to the employees' compliance with the union's constitution, bylaws, or other regulations—subjects, however, which obviously are not relevant considerations in the implementation of a seniority provision. We can therefore see no basis for presuming that when an employer delegates to a union the authority to determine the seniority of its employees, or even to settle controversies with respect to seniority, such control will be exercised by the union in a nondiscriminatory manner. Rather, it is to be presumed, we believe, that such delegation is intended to, and in fact will, be used by the union

to encourage membership in the union. Accordingly, the inclusion of a bare provision, like that in the 1949 contract, that delegates complete control over seniority to a union is violative of the Act because it tends to encourage membership in the union. And because we believe that it will similarly tend to encourage membership in the union, we also conclude that, the inclusion of a statement, like that in the 1952 contract, that seniority will be determined without regard to union membership is not by itself enough to cure the vice of giving to the union complete control over the settlement of a "controversy" with respect to seniority.

From his reliance upon the Pacific Intermountain Express case, it is evident that the General Counsel analogizes the delegation to a union, by contract, of "complete control" over the resolution of seniority questions to contractual provisions, such as those involved here, which vest in a union the exclusive responsibility for the recruitment of qualified workmen subject only to the qualification that if the union cannot supply such labor within 48 hours after a request therefor, the employer may procure it from other sources. The analogy, however, does not survive scrutiny of the underlying reasons for the Board's holding in the Pacific Intermountain Express case.

In arriving at its result, the Board pointed out that "the objective standards relevant to a determination of seniority generally derive from the employment history of the employees involved, and

that information, is as a rule, peculiarly within the knowledge of the employer"; and that matters, such as those related to union membership, upon which the union is likely to be more informed than an employer, "are not relevant considerations to the implementation of a seniority provision." From these factors, the Board "presumed" that the delegation involved in the cited case was "intended to, and in fact (would), be used by the union to encourage membership in the union," and held the relevant provision in each contract to be "violative of the Act because it tends to encourage membership in the union."

However, the factors which led to the Board's presumption are not present here. It is common knowledge that the union hiring hall is a traditional feature of many industries, including the building trades,[11] and that its use as a source of supply of labor long antedated the passage of the Act. In that regard, it may be noted that the hiring hall maintained by Local 242 has been in existence for more than 30 years. It is also a matter of common knowledge that in many industries, employers look to, and rely upon, union hiring halls as convenient and necessary vehicles for the recruitment of labor.

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[11] Contractual provisions relating to union hiring halls, and the validity of their application, have been considered by the Board in many cases. See, among others, for example, American Pipe and Steel Corporation, 93 NLRB 54; Pacific American Shipowners Association, 90 NLRB 1099; Waterfront Employers of Washington, 98 NLRB 284; and Pacific Coast Marine Firemen, etc., 107 NLRB 593.

As the evidence in this proceeding establishes, this is true of members of the AGC Chapters. (See, in that connection, the testimony of Wilbur H. Landaas.) Moreover a union hiring hall also serves as a central point where workmen may make known their job necessities and secure employment, relieving them of the need for an expenditure of time, energy and money in a search for work at dispersed places. From what has been said, it is evident that, unlike the data generally needed to resolve questions of seniority, information concerning the availability of individuals for employment is frequently, to say the least, "peculiarly within the knowledge" of the union rather than of employers seeking workmen; and that such information may serve the convenience and needs of employers and employees alike. Bearing in mind such factors of industrial and economic convenience and necessity, I can see no basis for a presumption that a "bare provision" delegating to a union the responsibility for the recruitment of labor in the terms expressed in Section 6 "is intended to, and in fact will, be used" to encourage union membership. One could with at least equal logic, I think, presume that the purpose of such a provision, standing above, is to meet the industrial and economic convenience and necessities of employers and those seeking employment. Upon close scrutiny of the General Counsel's position, what it implies is that one should indulge a presumption from the naked provisions of Section 6, alone, that the parties thereto intend to, and will, use them for unlawful purposes, despite the

fact that they may also be used for the lawful purpose of furnishing employers with an advantageous source for the supply of labor, and jobseekers with a convenient method of securing work. The adoption of such a doctrine would, in my judgment, run counter to traditional and elementary legal concepts.

What is more, there are authorities that are more to the point than the Pacific Intermountain Express case. In Pacific American Shipowners Association, 90 NLRB 1099, the Board considered the legality of a contract proposal that "all unlicensed personnel" be secured through a union's hiring hall. The proposal included a prohibition against discrimination on the basis of union membership. The Board held that the proposal was not unlawful, pointing out that "the provision contained in the proposal that personnel be secured through the offices of the Respondent (the union) does not, on its face, require discrimination because of union affiliation" (ibid. p. 1101). The case of Pacific Marine Firemen, etc., 107 NLRB 593, decided a few weeks before the Pacific Intermountain Express case, also involved a contract provision requiring employers to secure all personnel in various classifications "from and through the offices" of a labor organization, and prohibiting discrimination because of membership or non-membership in the union. While the Board did not expressly pass upon the legality of the agreement, there is a clear implication in its decision that it proceeded upon the assumption that the contract was lawful, for in connection with the remedy it formulated

relating to a discriminatory application of the union's hiring hall, it went so far as to provide that the union's "obligation to maintain a nondiscriminatory hiring hall shall be limited to such times as it acts as the exclusive source of supply of the personnel * * *" (ibid. p. 594, n. 2). To be sure, the provisions in both cases, in contrast to Section 6, contained express prohibitions against discrimination on the basis of union membership. But it seems to me that hiring hall provisions which are not stated in discriminatory terms do not become discriminatory simply because of the omission of an express prohibition against discrimination. In that regard, it may be noted that the Board in the Pacific American Shipowners case appears to have considered the statement of such a prohibition as an added, rather than the controlling, reason for its conclusion that the hiring provision there involved was not unlawful. The sum of the matter is that the long standing precedent of the Pacific American Shipowners decision is applicable here, and that the distinguishable holding of the Pacific Intermountain Express case is inapposite. Hence, I do not agree that the provisions of Section 6 of the agreement between the AGC Chapters and the District Council are invalid per se, and I find that by the mere fact of "continuing (the agreement) in effect," the Respondents have not violated any of the provisions of the Act.[12]

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[12] Trial Examiner Martin S. Bennett recently held to the contrary in a case involving the same contractual provisions, the AGC Chapters, the Dis-

As noted earlier, apart from his claim that Section 6 of the contract contains provisions that are invalid per se, the General Counsel contends that in applying these provisions, Local 242 caused members of the AGC Chapters to discriminate against Lewis in violation of Section 8 (a) (3) in that the union failed and refused to dispatch him for employment by members of the Chapters because he was not a member of the organization. Preliminary to a resolution of the issue, it may be noted that the General Counsel advances no claim that Local 242 caused Nielsen (who is not a member of any of the Chapters) to discriminate against Lewis. Nor does the complaint include an allegation that Local 242 caused Todd's Shipyard to discriminate against Lewis.) (There is no evidence that the firm is a member of any of the Chapters.)[13] However, Buchanan's conversation with Nielsen, and Allman's failure to dispatch Lewis to Todd's Shipyard, are relevant to the question whether Local 242 has maintained a discriminatory policy of giving preferment in dispatch at its hiring hall to union members over those who are not members, and whether that policy has been applied to Lewis.

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trict Council, and a local affiliate of the latter. See Mountain Pacific, Seattle, and Tacoma Chapters of the Associated General Contractors of America, Inc., et als., Case Nos. 19-CA-1276 and 19-CB-392. That proceeding is now pending before the Board on exceptions.

[13] It may be observed in passing, also, that no evidence was offered that either Nielsen or Todd's Shipyard is engaged in interstate commerce or in operations affecting such commerce.

In that regard, Allman gave testimony to the effect that he never discriminated in dispatching Lewis on the basis of the latter's lack of membership in Local 242, asserting also that on the occasion when Lewis was sent to a job on May 17, he was dispatched to "about the first" opening to become available for a hod carrier at the hiring hall in the spring of 1956. I do not credit this testimony.[14] The evidence establishes, as Buchanan in effect conceded, that it is the union's policy to give preference in dispatch to its members. What is more, as Allman admitted, he is bound by the terms of an obligation he has taken, as an incident of the office he holds, to do all in his "power to procure employment for such brothers as may desire situations to any and all non-union men." I have no doubt that Allman repeatedly applied this policy to Lewis prior to the latter's dispatch on May

[14] Nor do I credit Allman's claim that he rejected Lewis' request for dispatch to the Todd job on May 17 because, according to Allman, the job required a man of smaller physical proportions than Lewis. When Lewis asked for the job, Allman gave no such reason for declining to dispatch him. Moreover, Lewis' undisputed version of his conversation with Allman on the occasion in question is that Allman told him that the job opening available was not at the shipyard. It may also be noted that in a written statement given to a representative of the General Counsel, Allman denied dispatching any hod carrier to Todd's Shipyard on May 17. Because of the foregoing, as well as other infirmities in Allman's testimony, I am persuaded that the reason he now advances for refusing to dispatch Lewis to the shipyard is an afterthought.

17 and referred union members to jobs in preference to Lewis because the latter was not a member of Local 242. Moreover, it is clear that Allman applied a carrot-and-stick procedure to Lewis to coerce him into withdrawing the charge he had filed against Local 242, refusing to dispatch Lewis on May 14 because he had filed the charge; then a few days later dispatching him in order to induce him to withdraw it; thereafter resorting to a policy of refusing to dispatch Lewis, and of rejecting his offers to become a member, because he had not withdrawn the charge; later furnishing Lewis with the "Official Receipt," obviously with a view to inducing him to drop the charge; and finally visiting Lewis at a project where he was at work and soliciting him to sign a paper that he wished to drop the charge, while intimating to Lewis that he would not be dispatched again unless the charge were withdrawn.

Despite the discriminatory treatment accorded Lewis by Local 242, the record will not support a finding that any members of the AGC Chapters (or, for that matter, any other employer) discriminated "with respect to the hire of Lewis," as the complaint alleges, and that Local 242 caused such discrimination, within the meaning of the Act. The heart of the matter is that there is no evidence in the record that any member of any of the AGC Chapters sought or requisitioned any labor at or through the office of Local 242 at any time since the effective date of the contract. Moral convictions that such requisitions were made will

not suffice, for they are no substitute for evidence.

However, the General Counsel takes the position in his brief, as he did, in effect, at the hearing, that "the determination of the extent of the discrimination" is a matter for the compliance stage of the proceeding. As support for his position, the General Counsel cites International Union of Operating Engineers, Local No. 12, 113 NLRB 655, recently enforced as modified, 38 LRRM 2776 (C.A. 9). That case is inapposite, for the Board made express findings that the employers there involved actually requisitioned labor from a hiring hall maintained by a union under the terms of a collective bargaining agreement (113 NLRB 655, 659). With that as a background, the Board found that the union had discriminated against a given individual in job referrals from the hiring hall, and concluded that the extent to which he "was injured by the unlawful system of preferences" could "properly be settled in the compliance stage of the proceeding" (ibid. p. 663). The General Counsel's position, and his reliance upon the cited case, beg the question, for what is at issue here is not "the determination of the extent of the discrimination," but whether the evidence will support a finding of discrimination, whatever its extent, by members of the AGC Chapters. The underlying theory of the General Counsel's case is that by force of Section 6 of the agreement, the Chapters, as agents for their members, delegated to the District Council and its affiliates, including Local 242, the responsibility for dispatching workmen for em-

ployment by such members, and that in the exercise of the authority delegated to it, Local 242 caused members of the Chapters to discriminate against Lewis. There is no doubt, as pointed out earlier, that Local 242 discriminated against Lewis, but there can be no finding that it discriminatorily exercised the authority delegated to it by members of the AGC Chapters if there is no evidence that at any time since the effective date of the agreement, any of these members sought or requisitioned labor from Local 242, the agency through which Lewis sought job referrals. The critical fact is that there is no such evidence, and however one may condemn the treatment accorded Lewis by Local 242, and desire to do him moral justice, one must not blind himself to deficiencies in the evidence.[15]

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[15] In the course of a discussion of the state of the record, the General Counsel made the observation at the hearing that Local 242 "kept no records of these incoming requisitions for hod carriers." Without deciding or implying that the state of the union's records has a material effect upon the issue at hand, it may be noted in passing that there is no proof that Local 242 keeps no records of such "incoming requisitions," although there is evidence that it maintains no registry for hod carriers seeking job referrals. Moreover, it does not appear that members of the AGC Chapters keep no records of such requisitions for labor as they may have occasion to submit to unions or that such members are unable to give evidence on the subject of requisitions submitted to Local 242. The General Counsel has apparently chosen to submit the case upon the theory that evidence of such requisitions is unnecessary to support a finding that

For the reasons stated above, I shall recommend that the complaint be dismissed in its entirety with respect to the AGC Chapters and the District Council, and that so much of it be dismissed as alleges that Local 242 caused members of the Chapters to discriminate against Lewis.

I reach a different result, however, in connection with the coercive efforts of Local 242 to induce Lewis to withdraw the charge he filed against that organization. The absence of evidence that the hiring hall maintained by Local 242 has been used by any members of the Chapters does not negate the fact that the maintenance of the hall was in effect embraced within the terms of a contract made between the District Council, on behalf of Local 242 and other unions, and organizations of employers whose operations affect commerce within the meaning of the Act, and that Local 242 used the hall as a means of coercing Lewis. The several threats made to Lewis that he would not be dispatched unless he withdrew the charge embraced the implication that he would not be referred to jobs upon any requisitions submitted by members of the Chapters under the terms of Section 6 of the contract. Accordingly, I find that as a result of each instance, described above, when Lewis was dispatched in order to induce him to withdraw the charge, and of each occasion, outlined above, when Local 242, whether through Buchanan or Allman

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members of the AGC Chapters have discriminated against Lewis, and that Local 242 has caused such discrimination.

or both, told Lewis in effect that he would not be dispatched or given employment through the hiring hall because he had filed the charge or that he would not be dispatched or given employment through the hiring hall unless the charge were withdrawn, Local 242 restrained and coerced Lewis in the exercise of rights guaranteed him by Section 7 of the Act, and thereby violated Section 8 (b) (1) (A) of the statute.[16]

IV. The effect of the unfair labor practices upon commerce

The unfair labor practices of Local 242 set forth in Section III, above, occurring in connection with the operations of the AGC Chapters described in Section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Local 242 has violated Section 8 (b) (1) (A) of the Act, I shall recommend below that the said Local 242 cease and desist from its unfair labor practices and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and on the entire record in this proceeding, I make the following:

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[16] D. D. Bean & Sons., 79 NLRB 724 (and cases cited at p. 725, n. 6).

Conclusions of Law

1. The AGC Chapters are, and each of them is, an employer within the meaning of Section 2 (2) of the Act.

2. The District Council and Local 242 are, respectively, labor organizations within the meaning of Section 2 (5) of the Act.

3. By restraining and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, as found above, Local 242 has engaged, and is engaging, in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Sections 2 (6) and 2 (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, I recommend that International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dispatching or referring to any job or employment any employee or individual seeking dispatch or referral to any job or employment, or promising or offering to dispatch or refer any such employee or individual to such job or em-

ployment, for the purpose of persuading or inducing any such employee or individual to withdraw or abandon a charge filed with the National Labor Relations Board, or upon condition that such a charge be withdrawn or abandoned;

(b) Threatening, or otherwise informing, any such employee or individual that he will not be dispatched or referred to any job or employment, or that he is being, or will be, denied any job or employment opportunity, because he has filed a charge with the National Labor Relations Board, or unless he withdraws, or promises or undertakes to withdraw or abandon, such a charge; and

(c) In any other manner restraining or coercing employees or individuals seeking dispatch or referral to any job or employment in the exercise of their right to self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.[17]

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[17] The course of conduct of Local 242 toward Lewis vitally affected his opportunities to earn a living. This type of behavior strikes at the heart of rights guaranteed employees by Section 7 of the Act, and manifests a disposition by Local 242

2. Take the following affirmative action which, I find, will effectuate the policies of the Act:

(a) Post in conspicuous places at its usual membership meeting place and office in Seattle, including places where individuals come to it for the purpose of seeking dispatch or referral to jobs or employment, and where notices to such individuals and members are customarily posted, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director of the Nineteenth Region of the Board, shall, after being signed by a duly authorized representative of said Local 242, be posted by it immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material; and

(b) Notify the said Regional Director, in writ-

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to thwart the exercise of all such rights as it may think its interests require. The guarantees set forth in Section 7 are interdependent, and the violations found above are related to other unfair labor practices proscribed by the Act. In view of the conduct of Local 242, it may be reasonably be anticipated that it will commit such other unfair labor practices in the future unless appropriately restrained. For that reason, and in order to make effective the interdependent guarantees of Section 7, I am of the opinion that the Board's order should embrace the terms set forth above. See N.L.R.B. v. Entwhistle Mfg. Co., 120 F. 2d 532 (C.A. 4); May Department Stores v. N.L.R.B., 326 U.S. 376.

ing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply with the foregoing recommendations applicable to it.

* * * * *

It is recommended that the complaint be dismissed in its entirety with respect to the District Council and the AGC Chapters.

It is further recommended that so much of the complaint be dismissed as alleges that Local 242 violated Sections 8 (b) (2) and 8 (b) (1) (A) of the Act by causing members of the AGC Chapters to discriminate in violation of Section 8 (a) (3) of the Act.

It is further recommended that, unless on or before 20 days from the receipt of this Intermediate Report and Recommended Order, Local 242 notify the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the said Local 242 to take the actions required of it above.

Dated this 11th day of December, 1956.

/s/ HERMAN MARX,
Trial Examiner.

APPENDIX A

Notice To Our Members and All Individuals Seeking Dispatch or Referral To Jobs By This Organization Pursuant To The Recommendations of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members and all individuals seeking dispatch or referral to jobs by us that:

We Will Not dispatch or refer to any job or employment any employee or individual seeking dispatch or referral to any job or employment, or promise or offer to dispatch or refer any such employee or individual to any such job or employment, for the purpose of persuading or inducing any such employee or individual to withdraw or abandon a charge filed with the National Labor Relations Board, or upon condition that such a charge be withdrawn or abandoned.

We Will Not threaten, or otherwise inform, any such employee or individual that he will not be dispatched or referred to any job or employment, or that he is being, or will be, denied any job or employment opportunity, because he has filed a charge with the National Labor Relations Board, or unless he withdraws, or promises or undertakes to withdraw or abandon, such a charge.

We Will Not in any other manner restrain or coerce employees or individuals seeking dispatch or referral to any job or employment in the exer-

cise of their right to self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO,

(Labor Organization.)

Dated .....

By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

119 NLRB No. 126 D-841

Seattle, Wash.

United States of America
Before the National Labor Relations Board

Case No. 19-CA-1374—Mountain Pacific Chapter of the Associated General Contractors, Inc., The Associated General Contractors of America, Seattle Chapter, Inc., and Associated General Contractors of America, Tacoma Chapter,

and

Case No. 19-CB-424 — International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO,

and

Case No. 19-CB-445—Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO,

and

Cyrus Lewis, Charging Party.

DECISION AND ORDER

On December 11, 1956, Trial Examiner Herman Marx issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Local 242 had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial

Examiner also recommended that the complaint be dismissed as to all other Respondents. Thereafter the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith, and as specifically indicated in an opinion which shall hereafter be issued.

(1) In the absence of any exceptions, we adopt the Trial Examiner's conclusion that the Respondent Union's threats and promises of benefits and inducements to charging party Lewis to get him to withdraw his charge in this case violated Section 8 (b) (1) (A) of the Act.

(2) In disagreement with the Trial Examiner and for reasons to be set forth in the opinion to issue hereafter, we conclude that the Respondent Employers have violated Section 8 (a) (3) and (1) of the Act, and the Respondent Unions have violated Section 8 (b) (2) and (1) (A) of the Act, by executing and maintaining in effect the hiring provisions of their contract.[1]

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[1] As only the charge against Respondent Local 242 was filed within six months of the execution of

(3) Also in disagreement with the Trial Examiner, we find that the implementation of the unlawful contract in the rejection of Lewis' continuous applications for employment was an unfair labor practice, and that the Respondent Unions thereby violated Section 8 (b) (2) and (1) (A) of the Act and the Respondent Employers thereby violated Section 8 (a) (3) and (1) of the Act.[2]

The Remedy

Having found that the Respondents, and each of them, have violated the Act, we shall order that they cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Respondents discriminated against Cyrus Lewis. The nature of the employment situation in this industry is such that no order of reinstatement is possible. Furthermore, as indicated above, this record does not specify the number of instances or the amounts of actual loss of employment by Lewis. Accordingly, the amounts of back pay due to him shall be computed in compliance proceedings. The back pay period shall begin March 15, 1956, when Lewis appeared at the

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the contract in question, our finding against the other Respondents is limited to the maintenance of the hiring provisions of the contract rather than their execution. Our remedial action herein is in no way affected by this difference.

[2] Member Murdock concurs in the finding of a violation with respect to Lewis for the reasons indicated in his attached opinion.

Unions' hiring hall in search of employment.[3] We shall order the various Respondents to notify Charging Party Lewis that they have no objection to his immediate employment.[4] The back pay liability of any Respondent shall be tolled 5 days after it serves such written notice on Charging Party Lewis. Back pay shall be computed in accordance with the formula stated in F. W. Woolworth Company, 90 NLRB 289.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondents Mountain Pacific Chapter of the Associated General Contractors, Inc.; The Associated General Contractors of America, Seattle Chapter, Inc.; and Associated General Contractors of America, Tacoma Chapter, and their officers, agents, successors and assigns, shall:

(a) Cease and desist from:

(1) Performing, maintaining, or otherwise giving effect to provisions of any agreement with the

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[3] As the Trial Examiner did not find that the Respondents discriminated against Lewis, the period from the date of the Intermediate Report to the date of the Order herein shall, in accordance with our usual practice, be excluded in computing the amount of back pay due him. Utah Construction Co., 95 NLRB 196.

[4] The Babcock & Wilcox Company, 110 NLRB 2116.

Respondent Unions or any other labor organization, which unlawfully condition the hire of applicants for employment, or the retention of employees in employment with any employer, upon clearance or approval by the Respondent Unions or any other labor organization, except as authorized by the proviso to Section 8 (a) (3) of the Act;

(2) In any like or related manner encouraging membership in the Respondent Unions, or in any other labor organization, or otherwise interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act:

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Make whole Cyrus Lewis for any loss of pay he may have suffered by reason of the discrimination against him, as provided in the Section herein entitled "The Remedy";

(2) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due under the terms of this Order;

(3) Post at their offices, and at the offices of each employer member of the Respondents, in conspicu-

ous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached hereto as Appendix A.[5] Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by representatives of Mountain Pacific, Seattle and Tacoma Chapters, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by Respondent Associations and their employer members to insure that said notices are not altered, defaced, or covered by any other material;

(4) Notify Cyrus Lewis and the Respondent Unions, in writing, that they have no objection to his employment, or to the employment of any other employees who are not members of the Respondent Unions or any other labor organization;

(5) Notify the Regional Director for the Nineteenth Region, in writing, within ten (10) days from the date of issuance of the opinion herein, what steps they have taken to comply herewith.

II. The Respondents International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, and Western Washington District Council of International Hodcarriers,

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[5] In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words, "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Building and Common Laborers Union of America, AFL-CIO, and their officers, representatives, and agents, shall:

(a) Cease and desist from:

(1) Performing, maintaining, or otherwise giving effect to provisions of any agreement with the Respondent Employers or with any other employer within the meaning of the Act, which unlawfully condition the hire of applicants for employment, or the retention of employees in employment with any employer upon clearance or approval by the Respondent Unions, except as authorized by the proviso to Section 8 (a) (3) of the Act;

(2) Causing or attempting to cause the Respondent Employers, or any other employer, to discriminate against employees or applicants for employment in violation of Section 8 (a) (3) of the Act;

(3) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act:

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Make whole Cyrus Lewis for any loss of pay he may have suffered by reason of the discrimination against him, as provided in the Section herein entitled "The Remedy";

(2) Notify Cyrus Lewis and the Respondent Em-

ployers, in writing, that they have no objection to his employment, or to the employment of any other employees who are not members of the Respondent Unions or any other labor organization;

(3) Post at their offices, in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached hereto as Appendix B.[6] Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by representatives of the Respondent Unions, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by them to insure that said notices are not altered, defaced, or covered by any other material;

(4) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the date of issuance of the opinion herein, what steps they have taken to comply herewith.

Dated, Washington, D. C., December 14, 1957.

BOYD LEEDOM, Chairman,
PHILIP RAY RODGERS, Member,
STEPHEN S. BEAN, Member,
JOSEPH ALTON JENKINS, Member,
[Seal] National Labor Relations Board.

[6] See footnote 18 above.

APPENDIX A

Notice to All Employees of and Applicants For Employment With Associated General Contractors of America, Inc., Mountain Pacific, Seattle, and Tacoma Chapters, and Their Constituent Members. Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not perform, maintain, or give effect to the provisions of any agreement with International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, Western Washington District Council, International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO, or with any other labor organization, which unlawfully conditions the hire of applicants for employment, or the retention of employees in employment with any employer, upon clearance or approval by the aforementioned labor organizations, except as authorized by Section 8 (a) (3) of the Act.

We Will Not in any like or related manner encourage membership in the aforementioned labor organizations, or in any other labor organization, or otherwise interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act.

We Will make whole Cyrus Lewis for any loss

of pay suffered as a result of the discrimination against him.

All our employees and prospective employees are free to become, to remain, or to refrain from becoming, or remaining, members of the above-named Unions or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

Mountain Pacific Chapter, The Associated General Contractors of America, Inc.

Dated .....

By .....
(Representative) (Title)

Seattle Chapter, The Associated General Contractors of America, Inc.

Dated .....

By .....
(Representative) (Title)

Tacoma Chapter, The Associated General Contractors of America, Inc.

Dated .....

By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

Notice to All Employees of and Applicants For Employment with Associated General Contractors of America, Inc., Mountain Pacific, Seattle, and Tacoma Chapters, or Their Constituent Members, Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not perform, maintain, or give effect to the provisions of any agreement with Mountain Pacific Chapter, Seattle Chapter, or Tacoma Chapter, of The Associated General Contractors of America, Inc. or with any other employer, which unlawfully condition the hire of applicants for employment, or the retention of employees in employment with any employer, upon clearance or approval by any labor organization, except as authorized by Section 8 (a) (3) of the Act.

We Will Not cause or attempt to cause the above-named Employers or any other employer to discriminate against employees or applicants for employment in violation of Section 8 (a) (3) of the Act.

We Will Not in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act.

We Will make whole Cyrus Lewis for any loss of pay suffered as a result of the discrimination against him.

International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO,

(Labor Organization.)

Dated .....

By .....

(Representative) (Title)

Western Washington District Council, International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO,

(Labor Organization.)

Dated .....

By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Abe Murdock, Member, dissenting in part and concurring in part:

Contrary to the majority, the main issue in this case is not a threshold matter. For more than seven years it has been well established Board law, judicially approved in every Circuit Court of Appeals in which the issue was raised, that an exclusive nondiscriminatory hiring hall is not per se

unlawful.[6] Now for the first time, in a sweeping decision ignoring all Board and Court precedents, the majority holds that such a contract is unlawful. The importance and far reaching consequences of the majority's decision cannot, in my opinion, be overestimated. Nor only does it silently overrule all previous decisions of the Board, but it is contrary to decisions of the Ninth, Sixth, and Third Circuit Courts of Appeals.[7] I have in other decisions during the past year expressed my concern that the majority was apparently by-passing precedent in hiring hall cases.[8] What seemed implicit in those decisions is made explicit here. I do not believe that the legality of hiring halls can be decided today by a majority of this Board as though no other decision of the Board or of the courts existed in this area. The correct rule of law with regard to exclusive hiring halls, deriving from the Board's decisions in National Union of Marine Cooks and Stewards (Pacific American Shipowners Association), supra, and Hunkin-Conkey Construction Company, supra, can be found in decisions of three Circuit Courts of Appeals.

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[6] National Union of Marine Cooks and Stewards (Pacific American Shipowners Association) 90 NLRB 1099; Hunkin-Conkey Construction Company 95 NLRB 433. See, also, court decisions cited below.

[7] See decisions cited below.

[8] See my dissenting opinions in The Marley Company, 117 NLRB 107, at pages 115-122; Koppers Company, Inc., 117 NLRB 1863 at pages 1872-1877.

In Eichleay Corporation v. N.L.R.B., 206 F. 2d 799, 803, the Court of Appeals for the Third Circuit stated the principle as follows:

We agree with Eichleay that 'The factor in a hiring hall arrangement which makes the device an unfair labor practice is the agreement to hire only union members referred to the employer.' Del E. Webb Construction Co. v. N.L.R.B. 8 Cir., 1952, 196 F. 2d 841, 845. A referral system is not per se improper, absent evidence that the union unlawfully discriminated in supplying the company with personnel. N.L.R.B. vs. Swinerton, 9 Circ., 1953, 202 F. 2d 511; Hunkin-Conkey Construction Co., 95 N.L.R.B. 433 (1951).

In the Swinerton case, supra, at page 514, the Court of Appeals for the Ninth Circuit held that the burden of proving discrimination by the union in the administration of a referral system was on the General Counsel:

An employer violates Section 8 (a) (3) and (1) of the Act if he requires membership in a labor organization as a condition precedent—to employment. N.L.R.B. v. J. R. Cantrell Company, 201 F. 2d (C.A. 9). The Board has contended that adoption of a system of union referral or clearance also violates the Act absent 'guarantee that the union does not discriminate against non-members in the issuance of referrals.' We do not believe that National Union of Marine Cooks and Stewards 90 NLRB 1099 supports this view. Although it was there noted that the provisions of an applicable

labor contract prohibited such discrimination, the Board did not indicate that a referral system was per se improper absent a 'guarantee' of non-discrimination. Such a rule would in practical effect shift the burden of proof on the question of discrimination from the General Counsel of the Board to the respondent. The rule which we deem proper was recognized by the Board in Hunkin-Conkey Const. Co., 95 NLRB 433 where it was said that an agreement that hiring of employees be done only through a particular union office does not violate the Act 'absent evidence that the union unlawfully discriminated in supplying the company with personnel.' 95 NLRB at 435; Cf. Del E. Webb Const. Co. v. N.L.R.B., 196 F. 2d 841, 845." (Emphasis supplied.)

The doctrine of the above cases has been cited with approval by the Court of Appeals for the Sixth Circuit in N.L.R.B. v. F. H. McGraw & Co., 206 F. 2d 635, 640.

It should, it seems to me, be perfectly clear from the decided cases that the Union under this contract was not free to pick and choose on any basis it sees fit. The law requires that an exclusive hiring hall be administered in a nondiscriminatory manner. The real issue here is whether, as the Court of Appeals for the Ninth Circuit pointed out, the burden of proof on the question of discrimination will be shifted from the General Counsel to the Union administering a hiring hall. In the instant case the majority presumes that the Union

will administer an otherwise lawful contract in an unlawful manner. This presumption is made conclusive unless the contract includes "objective criteria" which will explain and justify "the exclusive aspect of hiring hall referrals." Only thereafter, I take it, will the burden of proof be shouldered by the General Counsel to establish that the Union nevertheless administered the contract in a discriminatory manner. But the Statute places the burden of proof squarely on the General Counsel to establish in every case that a respondent before this Board has engaged in an unfair labor practice. The majority, indeed, admits that the statute does permit an exclusive hiring hall, pointing to the salutary objective served by such institutions and a statement by Senator Taft that the closed shop provision of the Taft Hartley Act was not aimed at the hiring hall of the type administered in the maritime industry. But the majority would add something new to the law as understood by Senator Taft. The majority now says that a nondiscriminatory hiring hall, which the Board, the courts, and Senator Taft regarded as perfectly legal, "runs counter to the express proscription of the Statute" unless "objective" standards are included in the hiring hall contract. If the majority is right in the conclusion that mere exclusive referral by a union constitutes discrimination within the meaning of Section 8 (a) (3), then the Board, the courts, and Senator Taft must have been wrong. If a hiring hall results in unlawful discrimination because, as the majority finds, "the

Union is arbitrary master and is contractually guaranteed to remain so," I fail to see how the inclusion of "objective" criteria in the contract can remove the element of discrimination or the encouragement of union membership. Under any circumstances the employer would have surrendered "all hiring authority" and the Union would be free under the contract to refer or not to refer applicants regardless of any expressed "objective" criteria. I am as much concerned as is the majority that purported nondiscriminatory hiring halls be nondiscriminatory in fact. But I do not believe that this Board has the power to hold, on the one hand, that such conduct by a union and an employer is lawful but on the other hand, that it is unlawful unless the contract contains words indicating an intention by the union to administer the contract lawfully. This is as much as to say that an employer violates Section 8 (a) (3) of the Act merely by discharging a union member unless at the same time he states that the discharge is for economic reasons. My understanding of the law is that the General Counsel must prove by a preponderance of the testimony that the discharge was intended to encourage or discourage union membership. Absent such proof, no unfair labor practice has been committed whether or not economic reasons were assigned by the employer for the discharge at the time it occurred. My view of the law in this respect is so well settled that it needs no citation of authority. In my opinion, the majority's novel approach to the hiring hall issue

amounts to nothing more than a finding that an otherwise lawful contract is unlawful unless the parties agree to include words expressing their lawful motivation. To my knowledge this is the first time that the Board or any court has found an unfair labor practice solely on the ground that the respondent failed to express a lawful motivation at the time the alleged unfair labor practice occurred.

While the majority states that their decision "is not to be taken as outlawing all hiring hall arrangements," I must note that the requirement of "objective" criteria does not provide unions and employers with a precise test of a lawful contract. The majority holds that the standards for referral of applicants are "matters primarily for the employer and the union to negotiate and settle" so long as they fall within the majority's notion of "typical objective standards." But the majority is free in the very next case to hold that the union and employer have incorporated insufficient objective criteria or that the criteria adopted by the parties is not, in the majority's opinion, typical. Thus, wholly apart from the adverse impact of this decision on contracts which have been already made in good faith in accord with preexisting Board and Court law, the majority's decision means, in effect, that the parties to future collective bargaining agreements, faithfully following the majority's rule as to the type of provisions which they must include in their hiring hall contract, may neverthe-

less be found to have violated this Statute because they guessed wrong.

In my opinion the statement of Senator Taft, quoted in the majority's decision, is entirely accurate and directly supports existing Board and court precedents. The last sentence of the quoted statement is particularly applicable to the majority's conclusion that the presence of "objective criteria" in a hiring hall contract is indispensable to its legality. Neither the law [Taft Hartley Act] nor these decisions [Board and court decisions relating to hiring halls] forbid hiring halls, even hiring halls operated by the unions, as long as they are not so operated as to create a closed shop with all of the abuses possible under such an arrangement, including discrimination against employees, prospective employees, members of union minority groups, and operation of a closed union. (Emphasis supplied.) Nothing in Senator Taft's statement suggests or permits the conclusion that hiring halls without objective criteria are somehow evil and contrary to the Statute, but that hiring halls with such criteria are perfectly lawful as the majority finds. Senator Taft was in agreement with previous Board and court decisions to the effect that where the General Counsel had proved that an ostensible nondiscriminatory hiring hall was, in fact, operated as a closed shop or in an otherwise discriminatory manner, the practice was unlawful. I find myself entirely in accord with these precedents and Senator Taft.

I would therefore find that the contract in this case is not per se unlawful, but that the union's discriminatory practices under it are unlawful, including the coercion and discrimination as to Lewis. Mountain Pacific, Seattle, and Tacoma Chapters of the Associated General Contractors of America, Inc., 117 NLRB 1319.

Dated Washington, D. C., Dec. 14, 1957.

ABE MURDOCK, Member,
National Labor Relations Board

[Endorsed]: No. 15966. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner and Respondent, vs. Mountain Pacific Chapter of The Associated General Contractors, Inc., The Associated General Contractors of America, Seattle Chapter, Inc., and Associated General Contractors of America, Tacoma Chapter, International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, and Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO, Respondents and Petitioners. Transcript of Record. Petition to Enforce and Petitions to Review Order of The National Labor Relations Board.

Filed: June 2, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
For The Ninth Circuit

No. 15966

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

MOUNTAIN PACIFIC CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS, INC., THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., and ASSOCIATED GENERAL CONTRACTORS OF AMERICA, TACOMA CHAPTER, INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL NO. 242, AFL-CIO, and WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO,
Respondents.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended

(61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order dated December 14, 1957. The consolidated proceeding resulting in said order is known upon the records of the Board as Case Nos. 19-CA-1374, 19-CB-424 and 19-CB-445.

In support of this petition the Board respectfully shows:

(1) Respondents, Mountain Pacific Chapter of the Associated General Contractors, Inc., The Associated General Contractors of America, Seattle Chapter, Inc., and Associated General Contractors of America, Tacoma Chapter (hereinafter called Respondent Employers), are corporate associations of employers engaged in business in the State of Washington, and Respondents, International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, and Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO (hereinafter called Respondent Unions), are labor organizations engaged in promoting and protecting the interests of their members in said state, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on December 14, 1957,

duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent Employers and their officers, agents, successors and assigns, and Respondent Unions, and their officers, representatives and agents. On the same date, the Board's Decision and Order was served upon Respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondents' Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 34 (7) (a) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent Employers and their officers, agents, successors and assigns and Re-

spondent Unions and their officers, representatives and agents, to comply therewith.

Dated at Washington, D. C. this 7th day of April, 1958.

/s/ THOMAS J. McDERMOTT,
Associate General Counsel,
National Labor Relations Board.

[Endorsed]: Filed April 9, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER AND PETITION FOR REVIEW OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC.

To the Honorable Judges of the Ninth Circuit Court of Appeals:

The Associated General Contractors of America, Seattle Chapter, Inc., hereby answers the petition for enforcement heretofore filed by the National Labor Relations Board, and petitions for a review by this court of the proceedings of the National Labor Relations Board and the order of said board in this matter.

Answering the allegations of the petition for enforcement, this respondent alleges:

1. This respondent, Associated General Contractors of America, Seattle Chapter, Inc., is a Washington corporation, functioning as a business

association to advance the common good of its members, and is not otherwise engaged in business. Its activities are carried on within the Ninth Circuit. Except as admitted herein, this respondent denies the allegations of paragraph 1 or denies that it has knowledge or information sufficient upon which to form a belief as to the truth or falsity thereof.

2. Answering paragraph 2, this respondent admits the entry of an order by the National Labor Relations Board under date of December 14, 1957, and admits that the same was served upon it, but denies that said order was legal or valid.

3. This respondent has no knowledge as to the allegations of paragraph 3.

Petition For Review

This respondent petitions this court to review the order of the National Labor Relations Board in the consolidated cases, before designated cases Nos. 19-CA-1374; 19-CB-424, and 19-CB-445, insofar as said order was directed against this respondent.

1. This petition for review is made pursuant to the provisions of subparagraph (f) of Section 160, Title 29, United States Code.

2. This respondent alleges that the transcript which will be filed by the National Labor Relations Board in connection with its petition for enforcement will be the same transcript as would be involved in this petition for review.

3. The order of the National Labor Relations Board is invalid and erroneous for the following reasons:

This respondent is not subject to the jurisdiction of the National Labor Relations Board and is not, and at no time material hereto was, an employer within the meaning of the National Labor Relations Act, nor was it engaged in commerce.

The procedure was not commenced within the time limited by law, particularly Section 10 (b) of the National Labor Relations Act.

It was not established that this respondent engaged in any unfair labor practice.

The findings of the National Labor Relations Board do not support the order which was entered against this respondent.

The order of the National Labor Relations Board is contrary to law.

Wherefore, this respondent prays that the order of the National Labor Relations Board be reviewed and set aside as to it, and that the petition for enforcement be denied.

LYCETTE, DIAMOND &
SYLVESTER,
By LYLE L. IVERSEN,
Attorneys for Associated General
Contractors of America, Seattle.

[Endorsed]: Filed April 22, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER AND PETITION FOR REVIEW OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL NO. 242, AFL-CIO, WESTERN WASHINGTON DISTRICT COUNCIL OF INTERNATIONAL HODCARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO

To the Honorable Judges of the Ninth Circuit Court of Appeals:

The International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, Western Washington District Council of International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO, hereby answer the petition for enforcement heretofore filed by the National Labor Relations Board, and petition for a review by this court of the proceedings of the National Labor Relations Board and the order of said board in this matter.

Answering the allegations of the petition for enforcement, these respondents allege:

1. These respondents admit that they are labor organizations engaged in promoting and protecting the interests of their members in the State of Washington within this judicial circuit. Except as admitted herein, these respondents deny the allegations of paragraph 1 or deny that they have

knowledge or information sufficient upon which to form a belief as to the truth or falsity thereof.

2. Answering paragraph 2, these respondents admit the entry of an order by the National Labor Relations Board under date of December 14, 1957, and admit that the same was served upon them, but deny that said order was legal or valid.

3. These respondents have no knowledge as to the allegations of paragraph 3.

Petition For Review

These respondents petition this court to review the order of the National Labor Relations Board in the consolidated cases, before designated cases Nos. 19-CA-1374; 19-CB-424, and 19-CB-445, insofar as said order was directed against these respondents.

1. This petition for review is made pursuant to the provisions of subparagraph (f) of Section 160, Title 29, United States Code.

2. These respondents allege that the transcript, exhibits and decisions of the National Labor Relations Board, which is sought to be reviewed will necessarily be filed by the National Labor Relations Board in connection with its petition for enforcement and will be the same transcript as would be involved in this petition for review.

3. The order of the National Labor Relations Board is invalid and erroneous for the following reasons:

The procedure was not commenced within the time limited by law, particularly Section 10 (b) of the National Labor Relations Act.

It was not established that these respondents engaged in any unfair labor practice.

The findings of the National Labor Relations Board do not support the order which was entered against these respondents.

The order of the National Labor Relations Board is contrary to law.

Wherefore, these respondents pray that the order of the National Labor Relations Board be reviewed and set aside as to them, and that the petition for enforcement be denied.

/s/ L. PRESLEY GILL,

Attorney for International Hodcarriers, Building and Common Laborers Union of America, Local No. 242, AFL-CIO, Western Washington District Council of International Hodcarriers, Building and Common Laborers of America, AFL-CIO.

[Endorsed]: Filed April 28, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER AND PETITION FOR REVIEW OF MOUNTAIN PACIFIC CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS, INC.

To the Honorable Judges of the Ninth Circuit Court of Appeals:

The Mountain Pacific Chapter of the Associated General Contractors, Inc. hereby answers the petition for enforcement heretofore filed by the National Labor Relations Board, and petitions for a review by this Court of the proceedings of the National Labor Relations Board and the order of said Board in this matter.

Answering the allegations of the petition for enforcement, this respondent alleges:

1. This respondent, Mountain Pacific Chapter of the Associated General Contractors, Inc., is a Washington corporation, functioning as a business association to advance the common good of its members, and is not otherwise engaged in business. Its activities are carried on within the Ninth Circuit. Except as admitted herein, this respondent denies the allegations of Paragraph 1 or denies that it has knowledge or information sufficient upon which to form a belief as to the truth or falsity thereof.

2. Answering Paragraph 2, this respondent admits the entry of an Order by the National Labor

Relations Board under date of December 14, 1957, and admits that the same was served upon it, but denies that said Order was legal or valid.

3. This respondent has no knowledge as to the allegations of Paragraph 3.

Petition For Review

This respondent petitions this Court to review the Order of the National Labor Relations Board in the consolidated cases, before designated cases Nos. 19-CA-1374; 19-CB-424; and 19-CB-445, insofar as said Order was directed against this respondent.

1. This petition for review is made pursuant to the provisions of subparagraph (f) of Section 160, Title 29, United States Code.

2. This respondent alleges that the transcript which will be filed by the National Labor Relations Board in connection with its petition for enforcement will be the same transcript as would be involved in this petition for review.

3. The Order of the National Labor Relations Board is invalid and erroneous for the following reasons:

This respondent is not subject to the jurisdiction of the National Labor Relations Board and is not, and at no time material hereto was, an employer within the meaning of the National Labor Relations Act, nor was it engaged in commerce.

The procedure was not commenced within the

time limited by law, particularly Section 10 (b) of the National Labor Relations Act.

It was not established that this respondent engaged in any unfair labor practice. That it was established that neither this respondent nor its members have any business transactions with the Building and Common Laborers Union of America, Local No. 242, AFL-CIO, or its members.

The findings of the National Labor Relations Board do not support the Order which was entered against this respondent.

The order of the National Labor Relations Board is contrary to law.

Wherefore, this respondent prays that the Order of the National Labor Relations Board be reviewed and set aside as to it, and that the petition for enforcement be denied.

ELLIOTT, LEE, CARNEY & THOMAS,

/s/ By ELVIN P. CARNEY,

Attorneys for the Mountain Pacific Chapter of the Associated General Contractors, Inc.

[Endorsed]: Filed April 28, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, petitioner herein, in accordance with the rules of this Court, hereby states the following as the points on which it intends to rely herein:

I. The Board validly determined that the Associated General Contractors Chapters and the Unions respectively violated Section 8 (a) (3) and (1) and 8 (b) (1) (A) and (3) by executing and maintaining in effect the terms of their agreement relative to hiring.

II. Substantial evidence supports the Board's conclusion that the Associated General Contractors Chapters and the Unions, respectively, violated Section 8 (a) (3) and (1) and 8 (b) (1) (A) and (2) of the Act by discriminating and causing the Chapters to discriminate against the job applicant Lewis, and that Local 242 further violated Section 8 (b) (1) (A) of the Act by threats, promises and inducements to withdraw his charge.

Dated at Washington, D. C. this 16th day of May, 1958.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

[Endorsed]: Filed May 22, 1958. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Nineteenth Region

In the Matter of:

Case No. 19-CA-1374—Mountain Pacific Chapter; Seattle Chapter; and Tacoma Chapter of Associated General Contractors of America, Inc. and Cyrus Lewis.

Case No. 19-CB-424 — International Hod Carriers, Building and Common Laborers Union, Local No. 242, AFL-CIO and Cyrus Lewis.

Case No. 19-CB-445—Western Washington District Council International Hod Carriers, Building and Common Laborers of America and Cyrus Lewis.

TRANSCRIPT OF PROCEEDINGS

Room 407, United States Courthouse, Seattle, Washington, Thursday, October 25, 1956.

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock, a.m.

Before: Herman Marx, Esq., Trial Examiner.

Appearances: Melton Boyd, Esq., 407 United States Courthouse, Seattle, Washington, appearing on behalf of General Counsel. Lyle L. Iverson, Esq., of the firm of Lycette, Diamond and Sylvester, 800 Hoge Building, Seattle, Washington, appearing on behalf of the Seattle and Tacoma Chapters of the Associated Contractors of America. Arvin P. Carney, Esq., of the firm of Elliott, Lee & Carney, 555 Dexter Horton Building, Seattle, Washington, appearing on behalf of Mountain Pacific Chapter of

the Associated General Contractors of America. Roy E. Jackson, appearing on behalf of the Building and Common Laborers Union of America, Local No. 242, AFL-CIO. [2]*

Proceedings

* * * * *

COLTON HARPER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [11]

Direct Examination

Q. (By Mr. Boyd): Your name is what?

A. Colton Harper.

Q. Your occupation is what?

A. Manager, Seattle Chapter, Associated General Contractors.

Q. You have been manager for how long?

A. One year.

Q. Prior to that time what capacity did you have with the Chapter?

A. I was assistant manager. * * * * * [12]

Trial Examiner: Are you going to prove any specific membership of any concerns?

Mr. Boyd: We have no such purpose in this proceeding. I believe when we get to the place of submitting the case it will appear that that was not necessary.

Trial Examiner: That may be. Do you contem-

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* Page numbers appearing at top of page of Reporter's Transcript of Record.

(Testimony of Colton Harper.)

plate any proof of application by the charging party, Mr. Lewis, for employment at any members?

Mr. Boyd: No. The evidence will disclose him seeking work at the union hall. [17]

* * * * *

Q. (By Mr. Boyd): You have produced and I have had marked and I hand you at this time two documents marked General Counsel's Exhibit No. 4, being in duplicate. What do you identify those [18] as being?

A. Those are the existing agreements between Western Washington District Council, International, Mountain Pacific, Seattle and Tacoma Chapters, of the Associated General Contractors of America.

* * * * *

(The document above referred to heretofore marked General Counsel's Exhibit No. 4 was received in evidence.)

[See page 178.]

Trial Examiner: One of them is a duplicate.

Q. (By Mr. Boyd): The recitation at the top indicates that this is an agreement in which the three chapters have joined in one agreement. Did the three chapters participate jointly in the negotiation of this agreement? A. Yes.

Q. And this agreement that is now in evidence is presently in effect? [19] A. Yes.

Q. Your chapter is presently a party to it?

A. Yes. [20]

* * * * *

(Testimony of Colton Harper.)

Q. (By Mr. Boyd): Does this agreement continue to be given effect by your membership?

A. That is a rather difficult thing to say. We continually have disputes over the agreements. Some of our members misinterpret the agreement or do not enforce it or do not work under the agreement as it was intended in the beginning.

Q. These disputes with respect to which you refer are disputes that come to your attention as the association manager?

A. Approximately 50 per cent of them do.

Q. How frequently do they come to your attention, Mr. Harper?

A. Oh, several times a week.

Q. There is a provision within the agreement that provides for these disputes? A. Yes.

Q. Being taken up between a representative of the Washington District Council and the representative of the chapter, isn't that correct?

A. That is correct. [23]

* * * * *

Q. (By Mr. Boyd): Is it not true, Mr. Harper, that it is pursuant to the provisions of subsection (a) of Paragraph 34 that you regularly engage in the matter of seeking to adjust the disputes that arise between the union, on the one side, and the employer members on the other?

A. Yes. [24]

* * * * *

Q. Reference is made in paragraph 28 of the agreement to—that is a permissive provision—read-

(Testimony of Colton Harper.)

ing, "The working rules of local unions which may be accepted as a part of this agreement shall be recognized" and so forth. May I ask, does Local 242 supply you with its local working rules?

A. No.

Q. Do you know whether they have a separate body of local working rules?

A. I have seen them. They do have a separate body.

Q. Is that the printed form you are referring to? A. Yes.

Q. That is, the form of the working rules that are prescribed in the decision that is published with the constitution of the International?

A. Yes.

Q. So in so far as they have working rules your knowledge of them is limited to those printed rules?

A. My actual knowledge of their working rules is limited to those in this agreement. [25]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Iverson): What, if anything, have you advised your members with respect to whether or not under this contract they can discriminate with respect to employment as to whether a man is a member or non-member of a union, particularly if it relates to employment in commerce?

A. We have from time to time advised our members that union membership is not a condition of employment under the law and we have pub-

(Testimony of Colton Harper.)

lished a bulletin within the last year that I think shows that.

Q. Have you at any time advised your members that under this contract it would be necessary for them to secure employees in commerce only from union sources? A. No, I have not. [35]

* * * * *

Q. Does it pay any people under this contract?

A. No.

Q. What is the form of the A.G.C. Seattle Chapter in so far as its organization is concerned, corporation, or partnership, or what?

A. Corporation.

Q. Does the A.G.C. Chapter itself take on any construction contracts? A. No.

Q. Does the A.G.C. Chapter itself do any work in commerce? A. No.

Q. Does the A.G.C. Chapter itself purchase materials received in commerce? [36] A. No.

Q. Have you ever had occasion to undertake to require or enforce as against—to require any member or enforce against any member any requirement that they recruit their employees solely through the union? A. No. [37]

* * * * *

Cross Examination

Q. (By Mr. Carney): Mr. Harper, is there any relationship between your chapter, the Seattle Chapter and the Mountain Pacific Chapter of the A.G.C., by contract or any other instrument?

A. No, there is none.

(Testimony of Colton Harper.)

Q. And you act independently of each other?

A. Yes. [39]

* * * * *

Redirect Examination * * * * *

Q. (By Mr. Boyd): As a matter of fact, you know that your membership in regular day-to-day practice follows the provisions of Section 6 in requisitioning employees through the union hiring hall, do you not?

A. I can't speak for any members, not being in their offices. All I could do would be to surmise.

Q. You have not heard any protest from the union of your members departing from that practice, have you? A. Yes, I have.

Q. To what extent?

A. Just being told that the members have done so and they would like to see them comply a little bit, with no threat or anything else, but——

Q. (Interrupting): Have you ever told the union in response to that information that you were not going to be bound by the [43] terms of that section, Section 6? A. No.

Q. And you have continued to publish Section 6 as a section of the contract presently in effect?

A. That is correct. [44]

* * * * *

Mr. Iverson: Of course I don't think, if the Examiner please, that we are confined to written advice. I think that it is perfectly proper to indicate that we had advised these people of this and if we can come up with a written bulletin of that kind

(Testimony of Colton Harper.)

we shall do it. But there is nothing in the rules anywhere that says that the advice must be written.

Now, it is the burden of the government to establish that we have given effect to and enforced this agreement during this time, and it is certainly pertinent, and there is no ground to strike testimony because it's indicated that the instructions were given verbally.

Trial Examiner: It seems to me that Mr. Boyd's motion can be divided into two parts. As far as the question of oral advice to the membership is concerned, I think his objection goes to the weight rather than the materiality. [45] * * * * *

Recross Examination

Q. (By Mr. Jackson): Do you have any knowledge, Mr. Harper, as to whether any of the employees* who may have employed Mr. Lewis, who is the charging witness in this case, were members of the A.G.C.?

* [Note: The word "Employees" appears to be in error and the correct word appears to be "Employers."]

A. When we were first notified of this case I checked with our members and was unable to find any one of our members who had ever employed Mr. Lewis or refused to employ him. [48]

Mr. Jackson: That is all. * * * * *

Trial Examiner: Thank you.

One more question. With respect to this advice about discrimination to which you referred before,

(Testimony of Colton Harper.)

this oral advice, if I remember correctly, you testified you couldn't remember the names of any members to whom you gave that advice. Was this advice that you volunteered or was it advice that was requested?

The Witness: Generally requested.

Trial Examiner: By whom was this requested?

The Witness: That is rather difficult to say, but since we receive many queries during the day on numerous subjects it would be awfully hard for me to even estimate how many people [52] in the six years I have been with the organization have asked me that question.

Trial Examiner: If I understand you correctly at this point, you have no recollection of any member to whom you gave such advice?

The Witness: I can't think of any because I haven't been asked the question recently.

Trial Examiner: When was the last time?

The Witness: Again I wouldn't know, but I would say perhaps in the last six to eight months period I have been asked that question.

Trial Examiner: General Counsel's Exhibit No. 4 was entered into on the 30th day of December 1955 and became effective on the 1st day of 1956. Have you any recollection of any individual who has ever requested such advice, or firm or corporation, any member, and to whom you gave such advice since this agreement became effective?

The Witness: No, I can't remember any indi-

(Testimony of Colton Harper.)

vidual or who it may have been, or who has asked me the question, I can't remember.

Trial Examiner: Do you, in fact, remember giving any member such information since January 1, 1956?

The Witness: Not in specific cases, but I am certain I have.

Trial Examiner: Have you any recollection when the last [53] time was that you did that?

The Witness: Sometime in the last six to eight months.

Trial Examiner: Sometime within the last six to eight months?

The Witness: No; what I mean is between six and eight months——

Trial Examiner: Ago?

The Witness: Yes. I don't think I have been asked the question within the last six months.

Trial Examiner: That takes us back approximately to April or March or February?

The Witness: Yes.

Trial Examiner: And can you tell me how many asked you within that time, that is, up to six or eight months ago?

The Witness: No. The only reason I have a recollection of it at all is that this party who called me had some fellow student who was on a spring vacation whom he wished to employ and he asked me if the fellow had to have union clearance, and I informed him that under the law the man did not. [54]

* * * * *

(Testimony of Colton Harper.)

Redirect Examination

Q. (By Mr. Boyd): Was this with respect to common labor employment or what type of employment? A. Yes, common labor employment.

Q. It involved a student situation?

A. Yes.

* * * * *

Q. What did you say?

A. What I said was that he called me and asked me if he could employ a student as a common laborer on his job for a period of two weeks during spring vacation.

Q. You told him he could?

A. Yes, I told him he could.

Q. That was the extent of the advice that you gave?

A. No. He asked me if he could do it without clearing the man through the union. I said, "Under the law you can do it without clearing the man through the union." [55]

* * * * *

ROBERT F. SHAPLEY

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): Your name and position is what?

A. Robert F. Shapley, and I am the manager of the Tacoma Chapter of the Associated General Contractors. [56]

* * * * *

(Testimony of Robert F. Shapley.)

Q. Have you notified the local in your area or the Western Washington District Council that you were no longer giving effect to paragraph 6 of the agreement?

A. I notified them through their building trades representative.

Q. What was it you notified them of?

A. I notified them that we had issued a memorandum or bulletin to our membership stating that—— [60]

* * * * *

Cross Examination

Q. (By Mr. Iverson): Do all of your members obtain all of their laborers in accordance with Section 6 of this agreement by getting their, by recruiting their, people through the union?

* * * * *

Trial Examiner: The witness may answer if he knows. [63]

A. No.

Q. (By Mr. Iverson): To what extent do they not? [64]

* * * * *

A. Since my short time in Tacoma I believe that there was only once that some union representative objected about a particular contractor because he was hiring men off the street. That is the term that is used. And that is the only particular case that I recall.

* * * * *

Q. Did you undertake to enforce or advise—did

(Testimony of Robert F. Shapley.)

you undertake to advise your members that they must comply?

Mr. Boyd: I object.

A. No, I didn't.

Trial Examiner: Comply with what?

Mr. Iverson: With Section 6, in hiring employees.

Mr. Boyd: I objected to this but the witness has answered, so I will withdraw the objection.

Trial Examiner: All right.

Q. (By Mr. Iverson): Mr. Boyd brought out the fact that you [66] had issued some kind of a bulletin. What kind of a bulletin did you issue?

A. It was a regular news bulletin to the General Contractor members of the organization. [67]

* * * * *

Q. (By Mr. Iverson): Did you ever advise your members as to any change in their attitude or their procedures or anything like that as a result of the Jussel case, and, if so, what did you advise them?

A. I advised them——

* * * * *

Q. (By Mr. Iverson): What did you advise them?

A. I advised them to, in their hiring of their employees, to comply with the Taft-Hartley Law.

* * * * *

Trial Examiner: Well, the bulletin has to be identified. If you are going to lay a foundation for it, you would have to identify it.

Gentlemen, I am going to strike this witness'

(Testimony of Robert F. Shapley.)

testimony [69] as to the contents of the bulletin. As far as I am concerned, the bulletin will have to be identified. If you can agree among yourselves as to a waiver of foundation, that will be perfectly agreeable to me. [70]

* * * * *

Q. (By Mr. Iverson): At any time subsequent to the negotiation of this present contract has the Tacoma Chapter taken any action to require its members to obtain all of their labor employees through the union? A. No.

Q. Will you furnish to me by tomorrow the bulletin that you have referred to? A. Yes.

Q. With respect to that bulletin, what distribution did it have?

A. It was sent to our entire General Contractor membership.

Q. Does it bear the date that it was sent out or can you tell us when it was sent out?

A. Yes, it does. It bears the date. I don't recall it.

Q. Was it sent out on the date that it bears?

A. Yes.

Q. Does your chapter employ any persons under the terms of this agreement itself?

* * * * *

The Witness: No. [72]

Q. (By Mr. Iverson): Does your chapter assume any responsibility for paying any of the people who are employed under this agreement?

A. No.

(Testimony of Robert F. Shapley.)

Q. Does your chapter do any construction work?

A. No.

Q. Does your chapter purchase supplies or materials in excess of a hundred thousand dollars in any year that might cross state lines? A. No.

Q. Is your chapter a corporation or a partnership? A. A corporation.

Q. Have any of the members of your chapter, to your knowledge, ever employed Mr. Lewis?

A. Not to my knowledge.

Q. Do you know whether or not any of your members have refused employment to Mr. Lewis?

A. I haven't heard about it.

Q. Have you any knowledge of any discrimination practiced by the union in the referral of employees to your members with respect to whether they were members or non-members of the union?

* * * * *

A. No. [74]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Jackson): And does your chapter or do the members of your chapter work in the Seattle area as well as the Tacoma area?

A. Occasionally. [75]

* * * * *

Q. (By Mr. Jackson): Showing you what has been marked General Counsel's 4, would you state what that is?

A. This agreement, I am quite sure, without looking at it, going into it, covers not only the

(Testimony of Robert F. Shapley.)
Seattle area but, in addition to that, the Tacoma area. [76]
* * * * *

Q. Do you have any dealings at all yourself with Local 242 here in Seattle, here in the Seattle area? A. I haven't had.

Mr. Jackson: That is all.

Redirect Examination

Q. (By Mr. Boyd): You did say, though, there are times when some of your Tacoma Chapter members will engage in construction work in the Seattle area? A. Yes, I did say that.

Q. At that time is the laborer work force requisitioned through the Tacoma local or the Seattle local? A. Both and partly.

Q. I beg your pardon?

A. Both and partly.

Q. Would you explain that answer? That was just ambiguous enough that it will require some explanation.

A. If the contractor has obtained his men from the union and had worked in the Tacoma area and had certain of his employees working for him there and obtained a job in the Seattle area, he may bring part of those men that he had obtained in Tacoma with him, and also in addition to that he would obtain additional men in the Seattle area. [77]

Q. Tell me this, you are speaking now of where he has a constant labor force, and he may bring a part of them with him?

(Testimony of Robert F. Shapley.)

A. That is true; that is what I mean.

Q. As the core of his working crew, is that right? A. Yes.

Q. In practice are those people directed to clear through the Local 242 in Seattle? A. No.

Q. Those people are cleared by virtue of their membership in the Tacoma local, is that it?

A. The question has never come to my — I am not aware of any type of clearance either way when they come over here.

Q. But as to additional hires that are required beyond his own force, work force, that he brings with him, those he would hire by requisitioning through the Seattle local?

A. He may, yes. [78]

* * * * *

Trial Examiner: Yes. I was referring to a subject that was opened up by Mr. Iverson before, namely, some conversation with a representative of 440. [85]

* * * * *

Q. (By Mr. Boyd): This man with whom you talked, his name was what?

A. I do not recall.

Q. But you know him, then, as a representative of Local 440? A. Yes.

Q. And he was objecting to your membership not complying with this agreement?

A. He was pointing out that they had not.

* * * * *

(Testimony of Robert F. Shapley.)

Q. He was insisting that the contract be complied with, wasn't he?

A. I don't recall that he insisted that it be complied with, but he did object to the manner in which this had taken place.

Q. Was this a discussion——

Trial Examiner: Excuse me just a moment.

Tell us what was said instead of using words like "insist" and "requested" and so forth; tell us what was said and when it was said and by whom. You can wind it all up in one package.

The Witness: Are you asking me to do that?

Trial Examiner: Yes.

The Witness: That is actually a pretty big order. These people call — I mean we have these phone calls and it's very difficult to remember the exact time and place and so forth, [86] but I believe that it was approximately two months ago on some road job—I don't remember, recall, the job—whereby——

Trial Examiner: A Seattle or Tacoma job?

The Witness: I believe it would have been in—well, it would have been in the Seattle jurisdiction, within the jurisdiction of the Seattle union.

Trial Examiner: All right, go ahead, sir.

The Witness: And that some objection was made to the manner in which two or three men were hired, something like that, I don't remember definitely, but some men were hired that the union objected to for some reason or other. I have even for-

(Testimony of Robert F. Shapley.)

gotten what the reason was. They made known those objections to me.

* * * * *

Trial Examiner: Do you recollect whether the conversation had anything to do with any individuals being hired [87] directly by your members?

The Witness: To be truthful, I don't know whether it was that or whether it was which union the men belonged to, whether they were in a different union than this union or whether it was thought they should be in their union or a different local, something of that type. I actually don't recall exactly what it was.

Q. (By Mr. Boyd): It may have been, then, an issue as to whether Locals 440 or 242 or your local down there had the right to do a certain type of work, is that it?

A. Something on that order, I imagine. It's mainly the issue was I don't believe the men belonged to 440, and that was the issue. [88]

* * * * *

Trial Examiner: Is the Labor Committee composed of members of your organization?

The Witness: Yes.

Trial Examiner: Can you tell me what the basis is for their purported power to negotiate these agreements?

The Witness: I believe it's specified in the by-laws that a negotiating committee—— [89]

* * * * *

WILBUR H. LANDAAS

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination * * * * *

Q. (By Mr. Boyd): And your employment?

A. Manager of the Mountain Pacific Chapter of the Associated General Contractors.

Q. Your organization has membership that operates in what area?

A. In the fifteen counties of western Washington principally, but they operate also outside of that area.

Q. Is there a particular distinction between the membership of your organization and the membership of either the Seattle Chapter or the Tacoma Chapter?

A. Yes, there is. Our organization members are engaged principally in highway and heavy construction as opposed to building construction.

Q. Do you have members who are engaged in building construction work?

A. We have members who may do building work, but our members are principally engaged in heavy and highway construction. They may do all kinds of work.

Trial Examiner: They are general contractors?

The Witness: They are general contractors.

Trial Examiner: As far as you know, or do you know, whether that is true of the other two chapters involved in this proceeding?

(Testimony of Wilbur H. Landaas.)

The Witness: There are some members of the other two chapters who likewise are engaged in all phases of construction work. But the Seattle Chapter's members are principally [92] engaged in building construction.

Trial Examiner: As general contractors?

The Witness: As general contractors. And the Tacoma Chapter has members who do both building and heavy and highway work. [93]

* * * * *

Q. (By Mr. Boyd): In order not to burden the record with additional exhibits, does not your by-laws provide, and I quote from Article I, subparagraph (c):

"To secure uniformity of action among the members forming the chapter, upon the general principles set forth in the constitution and by-laws of this chapter, and upon such other special lines of action as may be decided upon from time to time as being best for the interest of the chapter and for the good of the industry as a whole."

Have I quoted correctly from one of the aims of your organization? A. Right.

Q. Does not your rules of procedure under Article I, subparagraph (k), provide:

"All labor negotiations shall be handled through the Mountain Pacific Chapter office and under the jurisdiction of its duly elected labor committee. Individual members shall not, under any circumstances, sign agreements with any Labor Collective

(Testimony of Wilbur H. Landaas.)

Bargaining Agency without first obtaining specific approval from the Mountain Pacific Chapter''?

That is a provision within your rules of procedure? A. Right. [97]

* * * * *

Trial Examiner: Were those rules in effect at the time the contract, General Counsel's Exhibit No. 4, was negotiated?

The Witness: Correct.

Trial Examiner: Was there a labor committee in existence at that time?

The Witness: Yes.

Trial Examiner: Did the Labor Committee participate in those negotiations?

The Witness: Yes. [98]

* * * * *

Cross Examination

Q. (By Mr. Carney): What is the nature of your association as to whether it's a corporation, partnership, or otherwise?

A. It's a corporation.

Q. Does it have any contractual agreement or arrangements with the other three chapters, namely, Seattle and Tacoma? A. No.

Q. It's completely autonomous in its own field?

A. Yes.

* * * * *

Q. Does the Mountain Pacific Chapter, as such, buy or sell goods in interstate commerce in excess of a hundred thousand dollars? A. No.

Q. Does the Mountain Pacific Chapter, of itself,

(Testimony of Wilbur H. Landaas.)

enter into contracts to build buildings, highways, and other structures for others?

A. No, sir. [99]

Q. Do you have any contract, other than General Counsel's Exhibit 4, with Local No. 242 of the International Hodcarriers? A. No.

* * * * *

Q. (By Mr. Carney): Do you as a chapter have any negotiations with Local Union No. 242?

A. No negotiations and no contract.

Q. Why is that?

A. Local 242 is principally a union that supplies workmen on buildings, and to the best of my knowledge, in the nine years I have been with the association I have not had any occasion to have any conversation other than* in negotiations or in labor disputes between our members with Local 242.

* [Words "other than" appear to be surplusage.]

Q. So you have no contact with them as such as a labor organization?

A. Not in so far as labor relations are concerned.

Q. Do you know whether any of your members have any transactions with Local 242?

A. They might. I am not aware of it. It could be, but I am not aware that they have had transactions with Local 242.

Trial Examiner: Do you know whether they get any [100] laborers from that local?

The Witness: The District Council of Laborers,

(Testimony of Wilbur H. Landaas.)

the composition of it, is that, generally speaking, they are both combined building and heavy and highway local unions, but in Seattle they have two separate local unions: one is building, supplies men to building construction; and the other supplies men to heavy highway, sewer disposal and that type, as compared with building. And most of our members deal almost exclusively with Local 440 in this area.

Q. (By Mr. Carney): Has Cyrus ever applied to your association for employment? A. No.

Q. Has he ever been employed by your association? A. No.

Q. To your knowledge, have any of the members of your association employed him?

A. Not to my knowledge, no.

Q. To your knowledge, have any of them refused to employ him? A. No.

Q. Do you as an association participate with your members in securing labor forces for your members, in hiring employees?

A. No, absolutely not.

Q. Do you have anything to say to your members about the discharge of employees? [101]

A. No.

Q. Is there any necessity in your industry for a hiring hall of some kind?

A. Oh, absolutely. Whether we have unions or not we would still be required to have a pool of men, of qualified men, to man these jobs. Construction is not only a matter of obtaining men, it's a

(Testimony of Wilbur H. Landaas.)

matter of obtaining skilled men, for safety purposes. One man can cause a falling of a structure that can damage property and kill workmen. Furthermore, the construction industry pays some fifty per cent more for its workmen than other organizations or other activities, due to the fact that we demand highly skilled men. Our labor agreements—I am saying this very, very frankly—are negotiated to obtain for our members skilled men. If the union doesn't have skilled men, our people can get men wherever they want, but we need skilled men. We have to have some source for obtaining those people. We can't go to anyone because we have a jargon of the trade that is necessary, just as much as skill. We have a very specific problem. We perform work for governmental agencies and our work is of a very dangerous nature, and it's tremendously important that we have available people who can make use of this highly technical equipment that we operate.

Trial Examiner: Tell me this, please, while we are on the subject: how many of your members, if you know, employ [102] laborers who perform the work coming within the jurisdiction of Local 440, let us say, how many of your members employ laborers all year-round, that is, the same laborers?

The Witness: They may have some all year-round, but it would be a very small number. There may be some that are kept on the payroll the year-round, but the great bulk of the workmen that are required are required during the working season,

(Testimony of Wilbur H. Landaas.)

which is from five to maybe a maximum of nine months.

Trial Examiner: Well, typically, what happens to a laborer who is on a job for, let us say, thirty days, which is the duration of the job, typically does he remain on the payroll after the expiration of the employment on that particular job or does he go off the payroll?

The Witness: Remember, construction is a very fluid operation.

Trial Examiner: I remember, but I want to know it for this record.

The Witness: One contractor may have five jobs going, he may have three jobs going, he will transfer the bulk of workmen maybe this week from one operation to another operation on another job; it may even be out of the territory. When the operation is completed he will terminate the services of those workmen. He will maintain a very small number of men to maybe clean up his equipment or tools and to put his job in ship-shape prior to turning it over to the awarding agency. [103]

Trial Examiner: Is there any reason why he cannot conveniently hire those workmen whom he has terminated for his next job himself? Is there any reason for that?

The Witness: Why he can't?

Trial Examiner: Why he can't, any reason of convenience, yes, directly.

The Witness: He may, any one contractor, and most of them follow this practice, are bidding in the

(Testimony of Wilbur H. Landaas.)

common working area of this northwest. Now, we have jurisdiction over Western Washington, but our members are figuring just as much work in eastern Washington or maybe northern Idaho or Montana or Oregon, wherever there is work they figure on, they figure on a job. Even within the given area of Seattle he wouldn't necessarily know what men can perform a particular operation. He is dependent upon a source of manpower dispersal to get the kind of people that he needs. Now, we have a show-up clause—this is maybe not pertinent, but it's terribly important to the problem that our members are faced with——

Trial Examiner: It may be quite pertinent. Go ahead, sir.

The Witness: They are required to pay four hours whether the man works or whether he doesn't work. The reason for that is good. It prevents a contractor who is not a human person from just willy-nilly calling, having, men report to work whether he wants them to work or not. So rather than [104] deprive those men of a chance to work somewhere else, he is required, if he calls them to work, to put them to work, so, therefore, he is out of pocket $10 when he calls one man to report for work. Now, he can't maintain a processing facility to determine whether these men whom he needs are qualified to man all this very technical and very expensive equipment, so he must count, he is completely dependent, on a source of information to supply him with good qualified men. Our agreement

(Testimony of Wilbur H. Landaas.)

only calls for qualified men. If the men are not qualified, then they can get, they are free to go and get, men wherever they wish.

Trial Examiner: How long has this hiring hall procedure, to your knowledge, been in effect?

The Witness: It's been in effect that ten years that I have been connected with the association, and I have——

Trial Examiner: That is all you are in a position to testify to, is that not so?

The Witness: I am aware that it was there much longer than that. [105]

* * * * *

Trial Examiner: Have you members who go to, say, Idaho from the Seattle-Tacoma region performing contracts?

The Witness: Yes, sir.

Trial Examiner: Have you any members in Idaho?

The Witness: We have members who perform work in Idaho, but not members, Idaho members, who just join our chapter, no.

Trial Examiner: Well, what would a member who performs work in Idaho but has his headquarters in the Seattle-Tacoma area do to get laborers in Idaho?

The Witness: That is a very good point. Even though the wage rate in Idaho may be very much less, even though they may have no hiring provisions whatsoever, we would still take, our members would take, their men from Seattle to Idaho to per-

(Testimony of Wilbur H. Landaas.)

form work. The skill of the workmen is so essential to the [106] operation of construction work that they take their men that they know and can count on.

Trial Examiner: Where would they get the men?

The Witness: They would take them right from whatever area they were operating in. If they were operating out of Yakima, they would take them from Yakima; if they were operating out of Seattle, they would take them from Seattle.

Trial Examiner: But where would they recruit them? How would they recruit them?

The Witness: The men they would take would be those on their payroll at the time.

Trial Examiner: How would they recruit men who are not on their payroll? That is what I am trying to find out.

The Witness: They would recruit men that they need from the source of information, the only source of men that is available; the qualified men are at the union hall.

Trial Examiner: All right.

Q. (By Mr. Carney): What he is trying to get, Mr. Landaas, was, in Idaho, if the man went there without a crew, where would he get his Idaho crew?

A. He would have to go to a labor organization.

Q. In Idaho?

A. To find qualified men.

Trial Examiner: I am not trying to find out from you where he would have to go. What I am

(Testimony of Wilbur H. Landaas.)

trying to find out from [107] you is if you know what he does do. What is the practice?

The Witness: That is it. They would go to the union to obtain the men that they need to man the equipment that they have to man.

Trial Examiner: From your knowledge of the industry can you tell me why that is so?

The Witness: It's necessarily so. A shovel runner, a powder man, is a man that can do, that can perform, considerably more work than someone who isn't experienced with it. He is also a safer man and he can perform the work in accordance with the specifications that we have to operate under.

Trial Examiner: What is a powder man?

The Witness: A man that shoots dynamite. [108]

* * * * *

Redirect Examination

Q. (By Mr. Boyd): What you have described in response to the Trial Examiner is the practice of your association members, that they follow. When they need men who are not already in their employ, it is their practice to call the hiring hall of the union that is local to that community in which they are working and recruit their force from that union?

A. With this one difference in what you say. There is a very definite distinction. If the men are not skilled, if there is an unskilled—we are not obligated to go to the union for someone who is not qualified, not a skilled man, we are not obligated to go anywhere. The union doesn't even expect us to

(Testimony of Wilbur H. Landaas.)

call upon them. But when it comes to men to man the classifications that we have in the agreement, which are skilled classifications, then we call on them because they have the men, not because we have to go to them but because they are the only source of information that we have available.

Q. But as a matter of fact, you agree in the agreement, do you not, to secure these men from the union? A. Only qualified men. [109]

* * * * *

Q. (By Mr. Boyd): As a matter of fact, do not your employer members seek to get whatever work force they need through the hiring hall? They don't hire off the banks in practice, do they?

A. I will bet our members have hired two hundred people this summer. I know of fifty students that were hired directly from the University, but for unskilled work.

Q. Was this the subject matter of complaints that the union made to you? [110]

A. No, not at all.

Q. How did this come to your attention?

A. Because we made arrangements with the university and we discussed it with the union, to place some of these engineering students and acquaint them with construction, that we felt would be a good thing for the industry, to develop engineers that would, instead of going into other fields of work, that would go into construction operations.

Q. This group of people you speak about, did

(Testimony of Wilbur H. Landaas.)

the union, with respect to that group of people, agree that they might be hired?

A. It was just a courtesy to let them know what we were doing.

Q. Did you not get an agreement from them with respect to requiring a referral from the union?

A. No.

Q. Was there not an understanding reached between you and the union that no referral would be required with respect to these university students?

A. Not with us there wasn't. [111]

* * * * *

Trial Examiner: I assume the General Counsel is aware of the extensive prevalence of these nondiscriminatory hiring halls and their extensive history in many industries of the country, including the shipping industry, the longshore industry, and so on? I assume that the General Counsel is aware of that.

Mr. Boyd: I am aware of it.

Trial Examiner: I am referring to the General Counsel, not to his representative.

Mr. Boyd: You are referring to the capital C General Counsel, not the little one down here at this level?

Trial Examiner: Yes.

Mr. Boyd: I think he is, but specifically in this proceeding we are interested in having the Board understand the theory of our litigation here; we are having the Board examine in this context what we believe it has said in another context.

(Testimony of Wilbur H. Landaas.)

Trial Examiner: To make myself clear, I am not suggesting that there is anything wrong in re-examining these positions. I simply wanted to make sure that I am absolutely certain of your position, that you contend that this contractual [113] language standing alone is unlawful.

Mr. Boyd: That is right. [114]

* * * * *

Q. (By Mr. Boyd): Apart from these who had student standing, with respect to persons employed to do common labor, have not your membership been required by the agreement to secure them, to recruit them, by calling the union to have such men dispatched? [115]

* * * * *

A. That is a difficult question to answer. I would have to answer it in my own way.

Q. (By Mr. Boyd): Give whatever answer will fully explain your position.

A. And it's a repetition of what I said before, that our people are required by circumstance to obtain qualified men from a source where those qualified men are available, whether we had unions or not, we would still have to have that type of pool, of facility available. By necessity of their job they are required to get skilled men from that source, and that source is the union. Unskilled men, they are not required, and they can get men wherever they want; there is no discrimination anywhere for unskilled men.

Q. My question of you was with respect to men

(Testimony of Wilbur H. Landaas.)

who are doing common labor. You characterized those as skilled or unskilled; I am not sure of what your classification may be. But men who are employed to do common labor, are they, as you know of the practice, secured by your employer members under the provisions of Section 6 of the contract through the Common Laborers' hall?

A. Necessarily so. And in order to obtain the type of [116] people that they require for their jobs, they have that one source available to them.

Q. Very well. I am content with your answer, but in order to make it abundantly clear, you are saying that only university students are the ones who are not qualified, is that it?

A. No. I just gave that as an example. There were many more than that who were employed this summer.

Q. For what type of work and where?

A. Well, that is quite a problem. We are building up a much greater volume of construction work in the area, the road program is expanding; the tremendous natural gas development caught us with a tremendous shortage of all classifications of men. It's necessary to train men. This year we had to take people and train them. Large numbers of people were brought into the game and trained by contractors this summer, even on shovels and bulldozers and——

Q. Weren't those people whom you secured to do any work that required no skill at all directed to

(Testimony of Wilbur H. Landaas.)

go down and clear through the union hall? Wasn't that a point of controversy?

A. I don't believe so, but I can't answer you directly. I don't know, unless——

Trial Examiner: Have you any personal knowledge of this?

The Witness: Yes, I know that many of them were not cleared through a union, but I can't answer his question [117] specifically.

Trial Examiner: Do I understand you cannot answer because you do not know? Is that the point?

The Witness: I can't break it down, but I do know, based upon the information that comes to me from my members, that many men were trained and they were taken from where they could get them.

Q. (By Mr. Boyd): Trained to do common labor that was not sent out through the union hall?

A. No; that was to—well, some of them, yes.

* * * * *

Trial Examiner: Doesn't your case shake down to this, Mr. Boyd, in a nutshell—I am still trying to find out—if you establish that either one or both of the labor organizations involved here discriminated in the dispatch of the charging party or others, it was the associations who created the conditions for that discrimination through the provisions [118] of the contract, and therefore they have violated the law? Isn't that your position?

Mr. Boyd: That is correct.

* * * * *

Trial Examiner: Look, I don't want to speculate

(Testimony of Wilbur H. Landaas.)

about what may come out in the evidence later, but I am meeting your complaint, and if I read your complaint right, what you are alleging is that the union discriminatorily refused to assign the charging party, Mr. Lewis? Is that right?

Mr. Boyd: That is right.

Trial Examiner: That is what you come down to?

Mr. Boyd: That is right.

Trial Examiner: And you say that the associations have joint responsibility because, by reason of their agreement to the Section 6 of G. C. 4, they make this alleged discrimination possible. Is that correct? [119]

Mr. Boyd: That is right.

Trial Examiner: If your thesis is correct, if it is correct, what difference would it make if there had been some exceptions, et cetera, et cetera?

Mr. Boyd: I would think it would make no difference if those exceptions were insubstantial.

Trial Examiner: But the law reaches discrimination wherever it exists, if it's unlawful——

Mr. Boyd: That is right, but I was endeavoring in this case, Mr. Examiner, to prove that the system operated as against a class of people and not simply Lewis.

Trial Examiner: All right, let's pursue the system in ten minutes. It's long past our time for a recess. Let's take a break for ten minutes now.

(Short recess.)

Trial Examiner: The hearing will be in order.

(Testimony of Wilbur H. Landaas.)

Q. (By Mr. Boyd): One other question I would direct to you, Mr. Landaas, is this: you say that in calling for men at the union hall you expect to get qualified workmen? A. Yes.

Q. Has your organization or any of the A.G.C. chapters, so far as you know, established any standards or description of job content which is to control the local union in determining the qualifications of people who are to be dispatched?

A. Every employer that needs a man will describe what he [120] needs in great detail, as to type of man he needs, when he is in need of a man.

Q. What you are saying is that reliance is then placed upon the union dispatcher to determine that the man whom he dispatches has whatever qualifications that he understands the employer wants?

A. I think you have to be quite familiar with construction to know what our problem is. We are constantly getting new and better and more complicated pieces of equipment. Construction is not done by a shovel, the common, ordinary number two hand shovel, any more; it's done with machinery: and the classifications that are spelled out in the agreement are pretty well known. We not only sit down in negotiations, we also meet with these people throughout the year. We work together principally because we have a tremendously important job to perform. They have a responsibility with us to obtain the type of men that our people need to man a job properly. I don't think

(Testimony of Wilbur H. Landaas.)

there is any question in anyone's mind in the business that when a man has called for a wagon drill operator or for any of these classifications but what it's understood that——

Q. (Interrupting) Now, even though you do, your employer member may specify what a wagon drill operator or a mixer or a power operator, whatever it may be, the matter of selecting which man shall be dispatched, however, is reposed in the [121] union dispatcher, is it not?

A. Oh, I don't believe that is true. I think they pick, they may name, someone who has been working with them before, for example, and ask them if they are available.

Q. All right. Except for the situation where they name a man by name, then the qualifying factor is, is this the person who has that name, but except for that do they not entrust the matter of selection entirely to the union dispatcher?

A. Not entirely, but to a great deal, yes, sir, that is true.

* * * * *

Q. (By Mr. Boyd): Do you recall the incident you were searching for in your mind awhile ago?

A. I do know a great number of men were employed this summer by our members outside of the union hall facilities. I can't name any company, any man. It has been reported to me——

Trial Examiner: That is just the problem with this whole line of interrogation and testimony; a great deal of it. Here is a gentleman who per-

forms while collar duties in some office; obviously what takes place at the union hall is not performed in the office, and obviously what takes place at [122] some distance from his office by people in the field working on construction jobs is not conducted in his office. What he hears from various people is obviously not probative. There has been the underlying reservation in my mind throughout a great deal of this line of interrogation that it is pure hearsay. If you have any probative evidence as to what the practice actually was, that is another story. But I am wondering how one can do anything but base speculative findings as to what actually happened in relation to the hiring of men if he himself did not have anything to do with it.

Mr. Boyd: I do not differ with the observation of the Trial Examiner. In view of the witness' disclosure that he is only able to identify the name of someone who made a report to him without being able to specify the detail of what he is alluding to, I believe that his testimony would have no value, and while I can't ask that it be stricken, because I invited it, I would have to in passing say it proves nothing.

Trial Examiner: All that I get back to is the very basic question in this case. There is an agreement which, as I understand the testimony, carries out a practice of many years standing. I assume from the allegations of your complaint that your position will be that the union has discriminatorily dispatched Mr. Lewis or failed to dispatch

him, as the case may be, and that you are alleging that the three chapters, because they agreed to Section 6 of the contract, have joint responsibility for such discrimination. [123]

Mr. Boyd: That is right.

Trial Examiner: Outside of that, I think we get bogged down into a whole lot of hearsay as far as these witnesses are concerned, because all they appear to do is get scatterings of information over the telephone, second-hand at best. I don't know that that is helpful to the basic question we have to have determined.

Mr. Boyd: In view of the witness' last answer, I have no further inquiry of him. [124]

* * * * *

(The document heretofore marked General Counsel's Exhibit No. 5 for identification was received in evidence.)

Trial Examiner: There is no testimony. By the way, there is some vague reference to the distribution in Mr. Harper's testimony, but we don't know specifically when it was distributed and to whom, but we will leave that to your [126] discretion, and we will let it stand as it is.

Mr. Boyd: I would make the offer with the further stipulation, that this was a bulletin issued on or about the date of August 23, 1956, which was sent to the membership of the Seattle Chapter of A.G.C.

Mr. Iverson: I think that is correct; it went to the general membership.

Trial Examiner: Can you all agree to the fact, gentlemen?

Mr. Jackson: Yes.

Mr. Carney: Yes.

Trial Examiner: All right, it will be received.

Mr. Boyd: I will call Mr. Buchanan.

ROBERT BUCHANAN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): Your name is what, sir?

A. Robert Buchanan.

Q. For six months of this year what was your employment?

A. I was secretary of the Building Laborers Local 242, financial secretary. [128]

* * * * *

Q. How long have you known Cyrus Lewis?

A. I wouldn't know. It was quite a few years ago that I met him first. I wouldn't recall when I met him first, but it's been quite sometime.

Q. Have you recently examined your own union records to refresh your recollection as to when he gained membership in your organization?

A. Back in '43 or '44, back in the forties, in the early forties, I think it was.

* * * * *

Q. (By Mr. Boyd): Did he at that time continue his membership?

(Testimony of Robert Buchanan.)

A. Oh, he continued it for sometime. I don't know whether he transferred out, but he must have continued it for a year or so anyway, or around that. * * * * * [130]

Q. In the spring of this year, Mr. Buchanan, was he then a member? A. No, he was not.

Q. So far as you have a recollection—did Lewis in 1956, following the first of the year, seek work through your hiring hall?

A. I believe he did. [131]

* * * * *

Q. Bearing in mind that date, and by reference to a calendar for the month of May of 1956, May 14 appearing to fall on Monday, I ask you this, do you recall the discussion you had on that day with Lewis about him having filed this charge?

A. I don't recall—do I recall a discussion with Mr. Lewis on that charge? [132]

* * * * *

Q. Do you recall what Leo said to you when Mr. Lewis came up that morning?

A. No, I don't recall what he said to me.

Q. All right, keeping in mind that this was at the time that the copy of the charge was received, which was on May 14, I will ask you if you recall the circumstance that occurred on the preceding Wednesday, May 9, where you saw Lewis on a job.

A. That was on the 9th? Well, yes. Now we will piece this together. He was at that particular time, Mr. Lewis, I believe, was working on a construction building on Denny Way, an addition

(Testimony of Robert Buchanan.)

to the Teamsters' Hall, I guess that is the day you refer to.

* * * * *

Q. Had your union dispatched him to that job?

A. No.

Q. What did you do when you found him working on that job?

A. I asked Mr. Lewis who he was working for.

Q. That is right. Did he point out to you the man he was working for?

A. He pointed out the man he was working for.

Q. Then what did you do?

A. Well, the man who he was working for wasn't the contractor, he was the house mover who had——

Q. He was the subcontractor?

A. He took a subcontract to raise* the building, yes. [134]

[* Note: Transcript incorrectly spells the word "raze" as "raise" on line 25.]

* * * * *

Q. And there was a discussion as to whether or not the union would send Lewis out on a job? Do you remember this conversation?

A. No, I don't think it was a discussion as to whether he would send him out, as to whether he* would take Lewis into the organization.

*[Note: Transcript incorrectly spells word "we" as "he" on line 13.]

* * * * *

Q. Do you not recall that there was some dis-

(Testimony of Robert Buchanan.)

cussion as to whether Lewis would have to choose whether he wanted to go out as a common laborer or as a hod carrier?

A. That is correct, yes, we have separate classifications.

Q. Do you not recall that you told Dan Boyd to send Lewis back down and have him tell you whether he wanted to go out as a hod carrier or a common laborer? A. That is correct, yes.

Q. Following that conversation you had with Dan Boyd, whether you remember it to be on the telephone or otherwise, [137] following that, didn't Lewis come back down to the hall on the following day, the 15th? A. I believe he did.

Q. Did he on that occasion, to your recollection, inform you or Leo in your presence that he wanted to go out as a hod carrier?

A. Yes, that is correct.

Q. At this juncture, in order that the Trial Examiner will understand it and that the record here will show it, what was at that time your procedure that you followed in the hall with respect to dispatching hod carriers as a group, in comparison to the construction laborers or common laborers as a group? First, were they dispatched at the same room? A. No.

Q. You had separate rooms for them?

A. No; separate windows. Separate windows.

Q. Separate windows. All right, who did the dispatching of the hod carriers?

(Testimony of Robert Buchanan.)

A. Leo Allman did the dispatching of the hod carriers.

Q. Who did the dispatching of the common laborers?

A. Leo also handled the both of them.

Q. He handled both windows?

A. Both windows, yes.

Q. With regard to the common laborers, did you have a [138] register there of any kind for them?

A. Yes.

Q. How many registers did you carry at your window? How many registers did you have at your window?

A. We just had the one book.

Q. What was your system at that time about registering those who wanted work?

A. Well, they came and signed their name on the book and then they took their turn, that is, they, unless they were special provisions, that they wanted a buggy man or a jackhammer man or something like that, the laborers put their name on the book, all the laborers put their name on the book.

Q. When they signed their name on the book were they given a number? A. That is correct.

Q. They were given a number?

A. They were given a number.

Q. You are saying that they were sent out according to their number unless they were asked for by special name?

A. That is correct. Or else if, like transporta-

(Testimony of Robert Buchanan.)

tion or something like that, to go down and get someone with transportation or——

Q. What about your non-members, what did they sign?

A. They put their name in, we took their name on the back of the regular dispatch book. [139]

Q. But normally in your dispatching of people to the common laboring jobs, you would dispatch by number as long as there were people there holding numbers? A. That is correct.

Q. Then, when you had exhausted those who held numbers you would then dispatch those who had no number, whose names were on the back of the registration?

A. If they were present. We used the same procedure, only in reverse, we dispatched the non-members in rotation according to their number if they were present.

Q. As to the hod carrier group, Bob, did you have a registration book for them?

A. No, we didn't have a registration for them. They are quite fewer, there are not too many of them, and they are more regularly employed than the laborers, they work for the same contractors, some of them work them for a year and two years, we had no book for them, we just had to remember who was there until a call came in.

Trial Examiner: Do you remember who was idle?

The Witness: Just, just to remember who was reporting; if someone called up and said, "I am

(Testimony of Robert Buchanan.)

through, I will be down to the hall", or something like that.

Trial Examiner: Did you ever have a situation where more than one man was idle?

The Witness: Oh, yes. [140]

Trial Examiner: How would you pick which one to call?

The Witness: We would give the members their choice to a certain extent. In the hodcarrying business there are some hod carriers who won't work for certain contractors, and others prefer to work for that contractor, so we let the members decide which one to go to, if there were some more men there, and also one or two calls.

Q. (By Mr. Boyd): So that we may understand fully your answer, approximately what was the number of hod carriers that had membership in your organization? A. Altogether?

Q. Altogether. A. Around 70, I believe.

Q. Approximately what was the number of those who fell in the class of common laborers or construction workmen in your organization?

A. Around 17, 18 hundred.

Q. Seventeen hundred?

A. Yes, around that figure, yes.

Q. Normally, in normal operations, about how many hod carriers would show up on a morning, in the course of a morning, for dispatch?

A. Oh, five, six and seven there at one particular time. During the time Mr. Lewis was there there was no plastering going on, there were a

(Testimony of Robert Buchanan.)

group of plasterers and hod carriers [141] idle for a matter of five or six weeks at that particular time. All the work had been caught up and there were probably six or seven there almost every day.

* * * * *

Q. Do I understand from your answer that, with respect to the hod carriers, you would let the members choose which contractor, whether to go out with a particular contractor?

A. Yes, that is true. We allow the members that preference, the hod carriers that preference. In other words, say, Mr. Boyd called for a man, he would say, "You give that to someone else, I don't want to work for him", that was their privilege to do so.

Q. But if this particular hod carrier had worked for this man before, he had the privilege of claiming that job, is that what you say?

A. If he wanted to go back there, yes, that is correct, if he wanted to go back.

Q. You are saying this was the right that was given to the members. How was the determination as to non-members [142] made, in sending them out on hod carrier work? Or did you send non-members out on hod carrier work?

A. That is, we have sent them out. Naturally there would be times when the regular members were not there.

Q. When the regular members were not there and there was a job available, you would send the non-member out, you would send out a non-mem-

(Testimony of Robert Buchanan.)

ber? A. Yes.

Q. You have rather conscientiously observed the obligation that is set out in your constitution with respect to your giving preference to members over non-members? A. Well——

Q. I direct your attention——

Trial Examiner: He said, "Well", and that is all.

Mr. Boyd: I see.

Trial Examiner: The question, have you conscientiously adhered to the rules that have been read to you by Mr. Boyd?

The Witness: I try to follow the constitution as nearly as possible, yes.

Q. (By Mr. Boyd): You also have tried to follow the obligation that you took as an official of the union, too, have you not? A. Certainly.

Q. Included in that is the provision, I quote: "And I further promise that I will do all in my power to procure employment for such brothers as may desire situations in preference to any and all non-union men". That has [143] been a part of your obligations, hasn't it?

A. That has been a part of our obligation, yes, sir.

Q. And you have lived up to that?

A. As near as possible.

Q. And is it not true, Bob, that officers, so far as you have been able to observe, the officers of your local union have continued to live up to this particular part of their obligation?

(Testimony of Robert Buchanan.)

A. Now, I can't speak for them, but I suppose that they lived up to the general provisions of it, yes. [144]

* * * * *

Q. I direct your attention now to the date of May 23rd and ask you if you recall him coming back in off the Landrus job and you and Leo and him talking at the dispatch window.

A. I believe, yes, I recall that, yes.

Q. What is your recollection of what took place at that time?

A. I guess Mr. Lewis talked about coming back into the organization, I believe that was part of our conversation, about becoming a member again of the organization.

Q. That he wanted to become a member of the organization? [146]

A. Of the organization, yes.

Q. What was said to him?

A. I believe we told him if he would get out and fill the bill and behave himself he could become a member.

Q. Do you remember anything else that was said to him?

A. Well, I don't recollect that anything much else was said to him.

Q. Is it your recollection that you did the talking to Cyrus or did Leo do the talking to Cyrus?

A. Leo did the most of the talking. I didn't do much talking the last month I was down there.

(Testimony of Robert Buchanan.)

I had just got over a bad heart attack and I didn't get into a controversy with anybody. [147]

* * * * *

Trial Examiner: In the laborers' register, if a man's number came up and he wasn't in the hall, what was your practice, what is your practice?

The Witness: He would miss his number, he would have to come and reregister again. He would lose his turn on the list. He might be working someplace. [152]

Trial Examiner: All right. But if he wasn't working someplace and if he wasn't in the hall, what would you do?

The Witness: We give him a new number.

Trial Examiner: You give him a new number?

The Witness: That is correct.

Trial Examiner: Would he go to the bottom of the list?

The Witness: Yes, he would go down below the last one who registered before, previous to him coming back in.

Trial Examiner: Do I understand, to get a job you had to be in the hall at the time your number came up? Is that correct?

The Witness: That is correct.

Trial Examiner: There is no provision for calling a man or getting in touch with him?

The Witness: On a special, if some particular man was called for, we would get him, even go out and look for him, that is, if some contractor

(Testimony of Robert Buchanan.)

wanted some special man whose name was on the list, irrespective of what number he had.

Trial Examiner: But supposing a man isn't specifically asked for, a call comes in for a man, does he have to be in the hall to be dispatched?

The Witness: Oh, yes, because they want him right at that particular time, that is, there is no, generally they want him inside of the quickest possible transportation to the job. [153]

Trial Examiner: Do I understand also that in those circumstances, if a man who is not a member is in the hall and a man who is a member is in the hall, that the man who is a member will be dispatched?

The Witness: He will have the first preference, that is correct.

Q. Is that also true of the hod carriers' window?

A. No. We have no list for them, it is a matter of just finding who is out or which one they will fit in with. The hod carriers have a separate setup entirely.

Trial Examiner: All right, sir.

Cross Examination

Q. (By Mr. Jackson): Mr. Buchanan, I believe you said you had been there 34 years, that is, up until this past year, as the secretary and business agent of Local 242. A. That is correct.

Q. And this hiring hall procedure which you have described with reference to dispatching men,

(Testimony of Robert Buchanan.)

how long has that existed there at the Local 242 Union?

A. Way back into 1924, '25, we had that same system.

Q. And that same system has been carried on through all these years?

A. Has been carried on through all these years.

Q. And you have had the same system with reference to dispatching hod carriers? [154]

A. That is correct.

Q. And the same is true of dispatching laborers? A. Yes.

Q. Mr. Buchanan, Mr. Boyd asked you about Mr. Lewis. I believe you said that Mr. Lewis had become a member, I think the record shows here he became a member in 1943, I believe the record shows that is when he first became a member, and then in October of 1943 Lewis was suspended from membership for non-payment of dues. To refresh your recollection, would that be about right?

A. That would be fairly close, yes.

Q. Then later on in 1947 it shows that in January, January 16, 1947, he again became a member and then was a member until October of 1949 when he was again suspended for non-payment of dues. Would that be correct?

A. That is approximate, that is, I couldn't say the exact years, but that is about the time, yes, two years' time, yes.

Q. Between 1949 and 1956 when you have testified, in May of 1956, when Mr. Boyd asked you

(Testimony of Robert Buchanan.)

concerning these questions, during that period, I understand, he was not a member of Local 242?

A. That is correct.

Q. And had not been dispatched out of the hall on any work here in Seattle? A. No, no, sir.

Q. Then sometime in 1956 he showed up at the hall and was looking for work, is that my understanding?

A. Yes, I believe it was in early '56, yes.

Q. And he was classified at that time as a suspended member? A. That is right.

Q. When your members of the union fail to pay their dues, is that the method of penalizing the member, is to suspend him for non-payment of dues?

A. Yes, after ninety days we suspend them for non-payment of dues.

Q. That is the practice that is followed with all the members, is that correct?

A. That is right.

Trial Examiner: In the dispatch of work, if a man is suspended, is he treated as a member or non-member?

The Witness: Say, if he was 90 days in arrears and he came in and promised to straighten up, he would be.

Trial Examiner: I mean a man who is suspended, period, he has promised nothing, is he treated as a member or a non-member?

The Witness: If he had been a member, we would treat him as a member; as long as he was

(Testimony of Robert Buchanan.)

a well qualified workman, we would dispatch him out.

Trial Examiner: Even though he was suspended?

The Witness: Yes.

Trial Examiner: But suppose there was a member in good standing [156] in the hall when the job comes up, which one would you dispatch?

The Witness: In that case, we would dispatch the one we thought was best qualified, who would fill the bill, without distinction as to the member or non-member.

Trial Examiner: Is there a distinction between a member and a non-member, then?

The Witness: Yes. Well, the suspended members, some of them we know, if they have been in there, we know from a particular time; a non-member, we don't know what they are or what their qualifications are. [157]

* * * * *

Trial Examiner: The question is, however, whether Mr. Lewis had been there before May 9, 1956.

The Witness: Oh, yes, he had been there before May 9, that is correct.

Q. (By Mr. Jackson): But there had been no work to dispatch him on, even if he had asked for it, is that correct? A. That is correct.

Q. Then, as I understand, this work for Mr. Nielsen, that was a job for a subcontractor who

(Testimony of Robert Buchanan.)

was in the moving business? Is that my understanding? [158]

A. That was a subcontract from a subcontractor, a subcontract from the Iverson Wrecking Company. They had the original contract.

Q. He had gotten a job with Mr. Nielsen in moving work?

A. Helping to jack the house up.

Q. They had gotten a job over on the Teamsters' Hall?

A. Teamsters' Hall, that is right, yes.

Q. Then I believe, as I understand you to say, on May 17, then, Mr. Lewis came in, and I believe on the 16th he had come down and registered that he wanted to be a hod carrier?

A. That is right.

Q. In other words, he didn't want to go out on a classification as a common laborer?

A. He didn't want to go on the list, he wanted to go on the mental list, whatever you would call it, or the hod carriers' list.

Q. To your knowledge, had he had hod carrying experience? A. Oh, yes.

Q. So he was given the privilege of working out as a hod carrier and he was dispatched out, is that correct?

A. Yes; that was a few days later.

Q. Is it essential that the men determine whether they want to be on the common laborer list down there or whether they want to be on the hod carrier list?

(Testimony of Robert Buchanan.)

A. They determine that themselves, they have to stay on one. [159]

Q. They can't move back and forth from one to the other? A. Yes, that is right.

Q. Following the May 17—or let me ask you this, how long did you remain there then as the financial secretary?

A. About six weeks, five or six weeks.

Q. When did you leave?

A. I left the last week in June.

Q. The last week in June? A. Yes.

Q. That is, you retired at that time, as I understand it? A. Yes.

Q. I believe Mr. Allman took over your work as the financial secretary?

A. That is corrrect.

Q. And up until the time you left was Mr. Lewis being dispatched out when work was available? A. I understand he was, yes.

Q. Let me ask you, Mr. Buchanan, Mr. Boyd asked you, following this dispatch work or the dispatching of Mr. Lewis on or about May 17. After that work was completed he came back, I believe you said he came back into the hall and you had some conversation with him. I would like to ask you this, did you have some conversation with him as to his request to become a member again? Do you remember that?

A. Yes, he said he would like to become a member again. [160]

Q. Is that when you had this discussion regard-

(Testimony of Robert Buchanan.)

ing the fact that he had filed this charge against the union and before he could become a member, why, he would have to withdraw the charge?

A. That is correct.

* * * * *

Q. (By Mr. Jackson): Let me ask you this, Mr. Buchanan. Where you have disputes with suspended members regarding their going to work, is there certain grievance procedure that [161] you have set up within the union that the member or former member must follow in order to be reinstated?

A. Yes, that is, if there is some question it is referred to the executive board, who are members of the organization.

Q. If a person has a suit pending or charge pending against the union, what is the union's consideration with reference to that particular member? Do they have to withdraw the charges before they can be considered for membership?

A. That is the practice, yes.

* * * * *

Trial Examiner: I will sustain the objection.

Q. (By Mr. Jackson): Mr. Buchanan, did you have any discussion with Mr. Lewis on or about May 17, 1956, after he had been [162] dispatched to his first job, when he came back into the union hall, about his becoming a member of the union?

A. That is correct, yes.

Q. Would you tell us now just exactly what was said between you and Mr. Lewis with respect to his

(Testimony of Robert Buchanan.)

becoming a member and what, if anything, he may have to do in order to become a member of the union again?

A. Yes. I believe I told him what he ought to do is withdraw his charges and come down and take his turn along with the rest of the hod carriers.

Q. Do you remember what he said about withdrawing the charges that he had filed against the union at that time?

* * * * *

A. I believe he said he would have to consult someone about it first before he would do it.

* * * * *

Q. To your knowledge, the charges were never withdrawn by Mr. Lewis?

A. That is correct. [163]

* * * * *

Redirect Examination * * * * *

Q. (By Mr. Boyd): Before this problem arose with Cyrus Lewis, he was not being given a number down there at the union hall this year, was he?

A. No, he was on the different, he was, preferred to go as a hod carrier, which had no number, that is right, but he had that preference to go on the list, I had Mr. Allman tell me.

* * * * *

Q. To be clear on one other thing, at the time you talked with Cyrus after he had the Landrus job and came back there, did you not say to him at that time, "You realize this suit [167] won't be up for three months"? A. That is right.

(Testimony of Robert Buchanan.)

Q. "It will be two or three months before a hearing. If you want to work out of here, you withdraw the suit"? A. Yes, I told him that.

Q. And that didn't have any relation at all to his membership, it had relation to him withdrawing the suit, didn't it?

A. Also becoming a member, if he would withdraw the suit he would become a member, too.

Q. In other words, he had to become a member before he could be dispatched out of there without discrimination? A. No, no, no.

Q. Well, under what circumstances? He would fall into the non-membership group, wouldn't he?

A. Group, and say they would call for hod carriers, Mr. Lewis would be dispatched along with the rest, as long as he, as long as the employment was available, yes, we would have dispatched Mr. Lewis out.

Q. He would be dispatched after the members had been dispatched out? A. That is correct.

Q. He would be dispatched with the non-members? A. Yes.

Trial Examiner: As a hod carrier?

The Witness: Yes. [168]

Trial Examiner: Do I understand you dispatch members before you dispatch non-members in the hod carrier classification?

The Witness: That is, we dispatch the members first, we dispatch the members first because they have preference, we might as well make the record straight.

(Testimony of Robert Buchanan.)

Trial Examiner: Is there anything else of this witness?

Recross Examination

Q. (By Mr. Jackson): During the time that you were there between May and June 30, in the jobs Mr. Lewis was dispatched to, were any of these employers by whom he was employed members of the A.G.C.?

A. No, they were all of them small subcontractors, none of them members of the A.G.C.

Q. Were any of them doing business in interstate commerce?

A. No, subcontractors, plasterers and bricklayers, very few of them doing interstate commerce work. [169]

* * * * *

Further Redirect Examination

Q. (By Mr. Boyd): First, Mr. Jackson referred to contractors to whom Lewis was referred. Now, in your testimony up to this point you have identified only one job to which he was referred, namely the job with Landrus out at the Sand Point Country Club district. Did you know that at a later date he was sent out on another job?

A. Yes, I believe he was sent out for——

Q. And that was to work for Chris Berg, wasn't it?

A. I don't know whether it was for Chris Berg —was it for Chris Berg? That is what I couldn't say. Mr. Allman would know the answer, who he was dispatched to.

(Testimony of Robert Buchanan.)

Q. Isn't it a fact that you know that Chris Berg is a member of the Seattle A.G.C. and does do work in Alaska?

A. That is what I meant when I said people who go to work in Alaska, Mr. Berg does do work in Alaska. [171]

* * * * *

ALBERT NIELSEN

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): Will you state your name and your occupation? A. Albert Nielsen.

Q. And your occupation?

A. Housemover.

Q. On May 9th of this year were you engaged in any housemoving work? A. Yes, I was.

Q. Where?

A. Well, as I recall, at the Teamsters' building. I don't have the correct address on it. [180]

* * * * *

Q. In the course of that day, Mr. Nielsen, did you employ any persons to perform common labor?

A. Yes, I did.

Q. And how many?

A. There was two boys that came along who wanted to work, and at that time I needed two men for the rest of the afternoon, and those boys hit me for work, they asked me if I had a job for them, so I put them to work.

(Testimony of Albert Nielsen.)

Q. Do you recognize Cyrus Lewis as being either of those two men?

A. That is one of them, yes.

Q. What transpired in the latter part of the afternoon with respect to their employment?

A. Well, along towards evening, I would say about 3:30 or a quarter to four, the union man came along and told me to let them go because they weren't union men.

Mr. Boyd: Would you read the answer, Mr. Reporter. I didn't hear it plainly. [181]

(Answer read.)

Q. (By Mr. Boyd): What was the full statement as to what would happen if you didn't let them go?

A. I just don't remember. That has been quite awhile ago.

Q. Specifically, was there any reference to picketing?

A. Yes, he said if I didn't keep straight union men on the job they would throw a union picket line on it, which we did, we kept union men on.

Q. I direct your attention to Bob Buchanan over here, the man seated the farthest there, he is to the right. Do you recognize him as the man who came over and talked to you that day?

A. Yes, it was Mr. Buchanan who came over and talked to me.

Q. Was it as a consequence of that that you let Lewis go that day?

A. Yes, I did. And furthermore, I had just

(Testimony of Albert Nielsen.)

planned on keeping them on that particular job, just that time, because we just needed the men for that half a day.

Q. Did you find Lewis a satisfactory workman?

A. Yes, I did. [182]

* * * * *

Trial Examiner: What was the scheduled quitting time?

The Witness: At 4:30, we quit at 4:30. The rest of the boys went home, so I let these fellows go, paid them and let them go. [183]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Jackson): And he never sought you out for any further employment?

A. No, not that I can recall anyway. [185]

* * * * *

Trial Examiner: Are you a member of any association of contractors?

The Witness: No. [187]

* * * * *

Mr. Boyd: We are in no position to prove that the operations of this employer affected commerce. This is adduced as the first incident in a chain of events that we are about to develop from other witnesses.

Trial Examiner: All right, now, that I may understand you, are you contending that this was discrimination under the terms of this contract?

Mr. Boyd: It was not discrimination under the terms of the contract, although it is discrimination,

it was not discrimination that was prohibited by the Taft-Hartley Act because the employer's operations don't affect commerce. [189]

* * * * *

CYRUS LEWIS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Boyd): And where do you live?

A. I live at 1811 East Madison.

Q. You are colored? A. Yes.

Q. What is your age? A. Fifty-two.

Q. What was the extent of your education?

A. About second grade.

Trial Examiner: Of grammer school?

The Witness: Second grade, grammar school.

Q. (By Mr. Boyd): What is your occupation?

A. Hod carrier.

Q. For how many years?

A. Oh, about 20 years. [204]

* * * * *

Q. Did you get any work in April through the union hall? A. No.

Q. Did you go there for work? A. Yes.

Q. How frequently did you go there?

A. I went there two or three times a week.

Q. On each occasion when you got there what did you do when you went to the union hall?

A. I told them I was inquiring for work. [207]

(Testimony of Cyrus Lewis.)

Q. What response did you get?

A. They kept telling me there wasn't anything and they weren't taking any members.

Trial Examiner: I didn't get the last. What did you say?

The Witness : They weren't taking any members in.

Trial Examiner: Did you make an application for membership?

The Witness: I tried to.

Mr. Boyd: I will state that. But before doing so, let me pass to one other thing.

Q. (By Mr. Boyd): Up until the time when you filed this charge on May 11, Cyrus, were you sent to any work by the union? A. No.

Q. Between the period when you first started looking for hod carrier work this spring and up to the time when you filed the charges did you get any hod carrier work? A. No.

Q. Did you from any other sources get any job as a hod carrier? A. No. [208]

* * * * *

Q. (By Mr. Boyd): Mr. Lewis, how long was your work with Landrus?

A. Three days and a half.

Q. You say you went out on May 17?

A. Yes.

Q. Did you go to work that day? A. Yes.

Q. And then you worked the 18th, on Friday?

A. Yes.

Q. And the following Monday and Tuesday?

(Testimony of Cyrus Lewis.)

A. Yes. [223]

* * * * *

Q. May 18 you went to the Union Hall. You were working out on the Landrus job?

A. I mean, I am talking about, after I finished the job. It must have been May 21 or May 22, because to the best of my recollection it was after he finished the Landrus job when it first was mentioned to me about withdrawing the case.

Q. About withdrawing the case? A. Yes.

Q. But were you at that time talking about joining the union or getting another job, when you went to the union at that time, did you go at that time, in May, for the purpose of getting another job or for the purpose of joining the union? Which was it? [231]

* * * * *

Q. (By Mr. Boyd): Talking about your conversation on June 21, that was when Leo said to you—first, you say on June 21 you said you were talking about re-instating. Did you have any money with which to re-instate? A. Yes.

Q. Where did you get that money?

A. Off of this job where I was working.

Q. Off the Berg job? A. That is right.

Q. Did you tender the money to Leo?

A. Yes. I walked up to the window and offered to pay him some money and he wouldn't accept it.

Q. And his statement to you at that time was what, now, so that we will be clear? [232]

* * * * *

(Testimony of Cyrus Lewis.)

A. When I went off of the Berg job I went down and tried to reinstate myself with the union, pay some dues, and to the best of my recollection he told me, he said, "No, I am not going to take your money until I get a statement from the Board that you have withdrawn the case."

Trial Examiner: Tell me, how much money did you have?

The Witness: I had $40 at that particular time.

Trial Examiner: Is that what you tendered to him?

The Witness: I had $40, expecting to pay $37.50. That is what the—that is what I learned, I mean the new, the initiation fee was, or whatever—no one had told me anything about what I had to pay, which I had been trying to pay, no one had told me what I had to pay, but from talking with different hodcarriers I learned the fee was $37.50. That is what I had the $40 in my pocket for.

Trial Examiner: Initiation fee?

The Witness: Yes, to reinstate, and I felt like I had once been a member and I just wanted to reinstate or do whatever I could towards the right thing, and I had $40 in my pocket at that particular time for that use, and I offered to pay it.

Q. (By Mr. Boyd): You have been testifying about June 21. Did you get any other work from the union or through the union in the month of June?

A. Yes.

Q. Stop and think and tell me where you got it, where you worked.

(Testimony of Cyrus Lewis.)

A. Well, after I finished the Chris Berg job, then the next job I got was working for Frodesen.

Q. When did you start on that work?

A. I started to work for Mr. Frodesen about June 10.

Q. Let's see is we can assist your recollection. I will hand you here a group of copies of your payroll slips and direct your attention to the fact that the last one was dated August 6, 1956, and the first one was dated July 13, 1956, for 16 hours' work, and that was for the week ending July 11. Does that refresh your recollection as to when you started working for Frodesen?

A. I started working for Frodesen on the 11th.

Q. If you had 16 hours, then, on the 11th, you actually started on the 10th, didn't you, the 10th of July? A. Yes.

Trial Examiner: How did you get that job?

The Witness: I got it through the union.

Trial Examiner: As a hodcarrier?

The Witness: Yes.

Trial Examiner: Who gave it to you?

The Witness: Leo.

Trial Examiner: Did you have any conversation with him [234] at that time?

The Witness: No.

Q. (By Mr. Boyd): Is it clear in your recollection now that your work with Frodesen started on July 10? A. That is right.

Q. At the time you started out on that job,

(Testimony of Cyrus Lewis.)

was anything in particular said to you by Leo at the time he gave you the referral?

A. No, not at all.

Q. Your payroll slips indicate that that work continued from July 10 up to August 6?

A. That is right.

Q. August 6 being on a Monday?

A. That is right.

Q. Actually did you leave that project on that day? A. No, I didn't.

Q. What did you do for the balance of that day?

A. I got laid off of Frodesen's job at 12 o'clock that Monday and I worked for Ruddy Valle.

Mr. Boyd: The name is Henrick Valle.

Q. (By Mr. Boyd): Is that correct, Henrick Valle?

A. Yes. And I worked for him for one day and a half.

Q. So you worked for him a half day on Monday and a full day on the 7th of August?

A. That is right. [235]

Trial Examiner: Did you get that job through the union?

The Witness: No.

Q. (By Mr. Boyd): But in the course of the time that you were working on that job did you see any official there from the union? A. Yes.

Q. Who was it that you saw on that job?

A. I guess I am right about the name. I think

(Testimony of Cyrus Lewis.)

it was Mr. Earl something. A little fellow, a short fellow.

Q. Did he make any objection to your being, working, on the Valle job without a dispatch?

A. No.

Q. Did you have any discussion with him about that? A. Yes; I told him about it.

Q. Having finished your work on this Frodesen and Valle jobs on August 7, what did you do after that?

A. After I finished that job I got laid off, and then I went back to the Union Hall.

Q. And when did you go back?

A. I went back to the Union Hall on the 9th—on the 8th.

Q. You went back the day after you were laid off the Valle job? A. On the 8th, yes.

Q. With whom did you talk?

A. I talked with Leo. [236]

Q. Do you remember what your conversation with Leo was on this particular day, August 8?

A. On August 8 I went down and talked to Leo and I told him I had finished that job and I would like to get dispatched out, and I offered to pay some money.

Q. And what did Leo say?

A. Leo told me, he said, "No, I am not going to receive any money from you until I get a letter from the big boys stating that you have dropped, that the case has been dropped."

(Testimony of Cyrus Lewis.)

Trial Examiner: Did he indicate to you whom he meant by "the big boys"?

The Witness: No. He just said, "a letter from the big boys"; that is all he said to me.

Trial Examiner: All right.

Q. (By Mr. Boyd): How soon after that, according to your recollection, is it, Cyrus, that you got further work?

A. Well, I got work pretty regularly then. The next job I went on, if I recall, was a job down on 1208 First Avenue, if I recall.

Q. I will hand you here, for the purpose of refreshing your recollection, if it will do so, I will show you this slip with respect to work while employed by Henry L. Mortensen. Looking at the slip itself, do you recall that that is the slip that you got with respect to this work that you were doing at that time? A. Yes. [237]

Q. That shows a date indicating that you worked there for a pay period ending August 24. Is that your recollection? A. Yes.

Q. During the time that you were working on that job——

Mr. Boyd: I withdraw that question.

Trial Examiner: Did you get this job through Leo?

The Witness: Yes.

Trial Examiner: And it was a hodcarrier's job?

The Witness: Yes.

Q. (By Mr. Boyd): Before asking you about anything that occurred on that job, let me direct

(Testimony of Cyrus Lewis.)

your attention to the week preceding that, the week before that. Did you have any contact with the union representatives the week before that?

A. You mean did I go to the Union Hall?

Q. All right, did you go to the Union Hall?

A. Yes, I went to the Union Hall.

Q. What day in the week did you go down there?

A. I went to the Union Hall from the time I finished the Frodesen job on the 6th, I went back, I mean on the 7th, I went back on the 8th, and I practically went every day until I got this job here.

Q. Let me hand you, to bring the matter into focus, let me hand you here a document, which for identification will be marked General Counsel's Exhibit No. 6. [238]

Trial Examiner: Yes, 6, that is right.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q. (By Mr. Boyd): Handing you this slip marked General Counsel's Exhibit No. 6 for identification, can you state what that is?

A. When I was given this——

Q. (Interrupting) Were you given that piece of paper? A. Yes.

Q. And by whom? A. Leo.

Q. You identify this as being what it is and as being given to you by Leo? A. Yes.

(Testimony of Cyrus Lewis.)

Mr. Boyd: We will offer General Counsel's Exhibit No. 6 in evidence.

Mr. Jackson: What does it purport to be?

Mr. Boyd: You have a copy of it there.

Mr. Jackson: We have no objection.

Trial Examiner: It is received.

(The document heretofore marked General Counsel's Exhibit No. 6 for identification was received in evidence.)

Q. (By Mr. Boyd): Directing your attention to this, now, it has a date entered on it of August 18, 1956, and by reference [239] to the calendar August 18 fell on a Saturday. Keeping in mind the date of August 18, on Saturday, do you recall what took place on that day? A. Yes.

Q. Will you tell us about what took place on that day?

A. I went down to the Union Hall on August 18 to pay some dues, try to reinstate whatever they would let me do, like I had been doing, and that morning when I got there Leo—I walked up to the window and told him what I was there for, and he told me to come in the office. That was the first time I ever tried to talk to him. I went in the office and he went in the office and me and him lit up a cigarette together, and he says, "I'll tell you what I am going to do", he says, "I won't take any money", he says, "but I am going to fix you up a slip as good as a book from August 18 until September 18", and so he did. This is the

(Testimony of Cyrus Lewis.)

slip. And he says, "You keep that until August 18 and we will see what happens."

Trial Examiner: Until after August 18?

The Witness: Until after August 18, and we will see what happens.

A. (Continuing) Then I taken it. I referred to him again when I walked out, and I said, "I won't have to pay any money here on anything? My business here is to pay some money." And he said, "No, you won't have to pay a nickel."

Q. (By Mr. Boyd): Did anything else occur before you left? [240]

A. I and he shook hands. He shook hands with me and I shook hands with him, and he said, "No hard feelings", and I said, "No hard feelings", and I walked away.

Q. You quoted him a moment ago, "We will wait until after August 18 and we will see what happens"? A. I meant after September 18.

Q. Was there one other little thing that happened there? Was there something that happened about a button?

A. Yes. I asked him to give me a work button, and he gave me one.

Trial Examiner: What kind of a button is that?

The Witness: It's just a union button that everybody wears around.

Q. (By Mr. Boyd): You say you got that slip on August 18, which was on Saturday. In the week that followed that you have testified that you were working for this Mortensen in the week that

(Testimony of Cyrus Lewis.)

ended August 24, is that right? A. Yes.

Q. You say the work was where?

A. The work was at 1204 First Avenue.

Q. While you were working there did you have any contact with any union officials?

A. Yes.

Q. With whom? A. Leo. [241]

Q. What took place?

A. Well, when I was working there Leo came down on the job, him and some man. I don't know who this man was, but it was some man with him. And he called me in person and asked me about, asked me had I been up and withdrawed the case and what was I going to do about it, and I told him, I said, "Well, I don't know." I said, "I have called them up and tried to talk to them about it and they told me that they wouldn't withdraw it, that it was out of my hands at the time." And so his purpose was, the way I was understanding it, he was trying to get me to say that I would withdraw the case or withdraw the charge.

Q. You fix that as being sometime in that week that ended on August 24? A. Yes.

Q. Did you have any further conversation with any union official at any time about withdrawing the case? A. At another date, yes.

Q. Where were you working at that time?

A. I was working on the corner of Melrose and Oliveway.

Q. Do you remember who you were working for? A. I was working for Beck.

(Testimony of Cyrus Lewis.)

Q. I will hand you here pay slips which indicate that you worked for Lloyd E. Beck for a period beginning September 19 through September 28, 1956. Is that about the time that you were working there, according to your own recollection?

A. Yes.

Q. You say you talked with Leo when you were working on that job? A. Yes.

Q. Will you tell us now in detail what happened in that conversation?

A. Well, he came on the job and called me off in person again and asked me had I tried to withdraw this case, and I told him, I said, "Well, I have called them up and talked to them", which I hadn't, and he says—at the time I wanted to keep working. I didn't know whether he was going to pull me off the job or what. I stalled him off. And at the time he says, "Well, to prove to me that you have tried to withdraw the case or want to withdraw the case", he says, "will you sign a paper stating that you want to withdraw the case or will withdraw the case?" and I told him, I says, "I will tell you, when I talked to them they told me it was out of my hands," and "I would rather you would call up and talk to some officials up there, my lawyer or somebody, some official up there. There is nothing else I can do." So the conversation led on from one word to the other, but I guess then part of it was he was trying to get me to sign a statement that I would withdraw the case at that time.

(Testimony of Cyrus Lewis.)

Mr. Jackson: Well——

Mr. Boyd (interrupting): He is only reiterating what he [243] said.

Trial Examiner: I am going to strike this witness' supposition as to what Leo was trying to get him to do. [244]

* * * * *

Q. (By Mr. Boyd): You have in your testimony here recalled that August 8, when you went down to the Union Hall, you offered to pay dues, and at that time Leo told you that he wouldn't accept anything until he got a letter from the big boys? A. Yes.

Q. Do you recall that? A. Yes. [245]

Q. And you testified previously that on June 21, right after the Berg job, that you offered to pay dues, and at that time he said that he wouldn't accept them until he found out how the case came out or what was going to be done with the case?

A. That is right.

* * * * *

Q. (By Mr. Boyd): My question to you, Mr. Lewis, was this, while previous to that time, while before that time, there were incidents when you offered to pay dues. At those previous [246] times when you offered to pay dues, which was actually back in before you filed the charge, when you were working for Metropolitan Builders——

A. Yes.

Q. (Continuing) ——was anything said at that time about withdrawing the charges?

(Testimony of Cyrus Lewis.)

A. No. There wasn't any charges at that time. If I understand you right, back in the time I worked for Metropolitan Builders, there wasn't any charges then.

Q. Then when you got the Landrus job in May, that is the first job they sent you out on?

A. Yes. [247]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Jackson): I see. You didn't call Nielsen up that night or the next day to see whether or not he had any further work that he hadn't told you about? A. No.

Q. I think you said that he asked you to call him up that night or the following——

A. (Interrupting) He did ask me, but I didn't.

Q. Then on the 10th you say you didn't do anything?

A. To the best of my recollection I don't think I did anything on that next day. [263]

* * * * *

Q. Do you know, Mr. Lewis, during the month of May, of any job prior to the time you filed this charge? Do you know of any job that the union could have sent you on that was available?

A. Yes.

Q. What job do you know that was available?

A. I don't know where the job was or who had had jobs, but I know there was jobs they could have sent me on.

Q. But you don't know the name of any em-

(Testimony of Cyrus Lewis.)

ployer to whom they could have sent you on a job?

A. No, I don't; I don't know that, but——

Q. (Interrupting) That was my question, now.

A. Yes.

Q. You don't know the name of any employer to whom the union could have sent you during the month of May up until the time you filed the charge, is that correct?

A. You mean from the month of May up until the time I filed [264] the charge?

Trial Examiner: No. Counsel means in the month of May up until the time you filed the charge, up to May 11, until May 11, do you know of any employer that the union could have sent you to that it didn't send you to.

The Witness: No, I don't.

Q. (By Mr. Jackson): During the month of March or April, 1956 do you know the name of any employer that the union could have sent you to, during those months, for employment?

A. No. If it didn't, I would have went to work myself, if they would have hired me.

Trial Examiner: You have answered the question.

Q. (By Mr. Jackson): If you had known where you could have gotten a job during March and April, 1956, you would have gone there to find that job, wouldn't you? A. Yes.

Q. But you didn't know of any work that was available where you could go and get a job during March and April of 1956, is that correct?

(Testimony of Cyrus Lewis.)

A. No. [265]

* * * * *

Q. Do I understand, then, Mr. Lewis, you have been working during, I believe, May, June, and July, August, and down to the present time, you have been working as a hodcarrier, is that my understanding?

A. Yes, I think my first job was in May, if I remember right.

Q. When you finish one job—strike that. [266] Have all the jobs you have been getting since May been obtained through the Union Hall, that is, Local 242? A. Yes.

Q. Have you gotten any jobs for yourself?

A. No.

Q. You haven't solicited any jobs for yourself, is that correct? A. No.

Q. Have you been working during the month of October?

A. Yes. To the best of my knowledge, if you will give me time to think—yes, I think I have.

Trial Examiner: On a job out of the Union Hall?

The Witness: Yes, it was a job out of the Union Hall.

Trial Examiner: Have you worked the whole month?

The Witness: No. I worked for—well, I can't think of the man's name, but I worked this month because I finished this past Tuesday. I can't recall his name, but I did work this month.

(Testimony of Cyrus Lewis.)

Trial Examiner: The entire month?

The Witness: No. I think I worked eight days for them, for this person.

Mr. Boyd: For the record, and to shorten it, Mr. Lewis would concur, I am sure, that since the issuance of that slip on August 18 he does not claim that he was discriminated against in the dispatching of work. [267]

Trial Examiner: What's more, you don't claim it, you don't claim that he was discriminated against?

Mr. Boyd: We do not claim that, either, that there has been any discrimination, in fact, since the issuance of the slip on August 18.

Q. (By Mr. Jackson): Have you had more work since August 18 than you had before August 18? A. Yes.

Q. Has there been more work available in the City of Seattle than prior to August 18?

A. I can't answer that.

Q. You wouldn't know that?

A. I wouldn't know that, no, sir.

* * * * *

Q. Mr. Lewis, during the month of July, 1956, do you know of any jobs that were open during the month of July that the union could have sent you on? [268]

* * * * *

The Witness: I don't know.

Q. (By Mr. Jackson): During the month of June do you know of any jobs that the union could

(Testimony of Cyrus Lewis.)

have sent you on? A. No.

Q. During the month of August, down to August 18, when Mr. Allman gave you this slip that has been referred to here, you know of any jobs in the early part of August, between August 1 and August 18, that they could have sent you on?

A. I didn't know of any. But they sent me on some.

Trial Examiner: Well, counsel is referring to jobs they could have sent you on that they didn't send you on. That is the question.

The Witness: I don't know.

Trial Examiner: If you don't know, as I said before, you don't know.

Q. (By Mr. Jackson): Also in the month of May, Mr. Lewis, May, 1956, do you know of any jobs that the union could have sent you on during the month of May that they didn't send you on?

A. No.

Trial Examiner: When did this Todd job come up that you referred to, in what month?

The Witness: I think it was May 17.

Trial Examiner: All right.

Q. (By Mr. Jackson): You say May 17. You understand there was a job at Todd's. Is that my understanding? A. Yes, sir.

Q. You don't know whether Todd's called for a special hodcarrier on that job or not, do you?

A. No, sir.

Q. And you had no discussion with the union about the Todd job? A. No. [270]

* * * * *

Mr. Boyd: And we say the system was the causation. We [276] are unable to trace, for remedy purposes, at this juncture we are unable to trace what jobs he could have had, but we say the system operated discriminatorily, therefore there was a causation. [277]

* * * * *

Trial Examiner: All right, gentlemen, I am prepared to pass on your motion to strike Mr. Nielsen's testimony. I am going to deny the motion. The testimony does not go to establishing that Nielsen discriminated against this witness within the meaning of the Act. I am retaining the testimony as evidence of a policy that the union had toward this witness, as evidence of a discriminatory policy toward him. That is the reason for the retention of the testimony. [281]

* * * * *

LEO ALLMAN

a witness called by and on behalf of the respondent union, was sworn and testified as follows:

Direct Examination

Q. (By Mr. Jackson): Would you state your name. A. My name is Leo Allman.

Q. And where do you live, Mr. Allman?

A. At 810 West McGraw Street.

Q. What is your business?

A. I am financial secretary for Local 242.

Q. How long have you held that job?

A. Since the last day of June this year.

Q. Prior to that time what was your job?

(Testimony of Leo Allman.)

A. I was dispatcher and corresponding secretary. [282]

* * * * *

Q. Are you acquainted with Mr. Cyrus Lewis?

A. Since this year, yes.

* * * * *

Q. What was the nature of this, how did you make his acquaintance?

A. He appeared at the office seeking work.

Q. Do you remember about when that was?

A. Well, it was early spring.

Q. Would that be about March?

A. Around March, I would say.

Q. And did you discuss with him what kind of work he was looking for?

A. Well, he told me he was looking for a hod carrying job. [283]

* * * * *

Q. When he first talked to you it was about obtaining a job as a hod carrier?

A. That is correct.

Q. What did you tell him at that time?

A. I told him that, if I remember correctly, at that particular time there was no work.

* * * * *

Q. Yes. You might explain the industry and how it works as far as hod carriers are concerned, what times of the year there is employment and what times there isn't, if that is true.

Q. The only way I can explain it is this, as a general rule in the winter you have so much rain,

(Testimony of Leo Allman.)

the ground is so wet, the moisture content is such that you cannot excavate for basements. Consequently your construction work, that is, new construction, is practically at a standstill until the ground dries up to where you can move equipment in and get at your excavation. You have the period of time after your excavation until your structure is built. During that period of time there [284] is always a slack time for plaster tenders, brick tenders, until your new construction is well on its way.

Trial Examiner: When is that?

The Witness: As a general rule, it is the last part of May, first part of June. It takes approximately, it is approximately 60 days from the time they get excavated, sometimes 60, sometimes 90, until they can do brickwork or plaster.

Q. (By Mr. Jackson): Is it reasonable to say, then, during the months of March and April up until the middle of May the work for hod carriers is very slack? A. That is correct, yes.

* * * * *

Q. Let's take a typical year in the course of the month of March, 1956. How many men would you have around the hall during a typical, average day who were seeking work, men unemployed and seeking work? [285]

A. Altogether, counting hod carriers and laborers, during the month of March and pretty near any particular year, you would have 75 to 80 men. That is conservative.

(Testimony of Leo Allman.)

Q. In dispatching, would you dispatch both laborers and hod carriers?

A. As a general rule.

Q. Would the men wait there — what is their practice, they come there and wait around the hall seeking employment? A. That is right.

Q. And how long do they generally wait there after arriving in the morning?

A. Well, the laborers, as a general rule, that is, the construction laborers, as a general rule, will stay there until approximately noon. The hod carriers generally stay there until 9 or 10 o'clock and then they shove off.

Q. Following, then, you might just tell us in your own words what your experience was with Mr. Lewis with reference to your ability to place him on any work and whether he was offered other work than that of a hod carrier.

A. I offered Mr. Lewis the opportunity of going on the laborers' list for this reason——

Trial Examiner: When was this?

The Witness: Well, I don't recall whether, I believe we offered him the opportunity of going on the laborers' list this spring, around in April, and I know I offered him a job as [286] a laborer approximately a month ago down here for Austin Construction Company.

* * * * *

Q. (By Mr. Jackson): He was seeking a job as a hod carrier. Did you have unemployed hod carriers there in the hall during the month of March?

(Testimony of Leo Allman.)

A. Oh, yes, that is correct.

Q. Did you have them there during the month of April? A. That is correct.

Q. When he came in during the month of March and April was there any work available as a hod carrier that you could have [287] sent him to?

A. No, sir.

Q. I believe you said in April you offered him a job as a laborer, and what was his reaction when you offered him a job as a laborer?

A. If I remember right, he told me he was a hod carrier and he preferred to go out as a hod carrier.

* * * * *

Q. (By Mr. Jackson): Mr. Allman, you told us that you had offered Mr. Lewis an opportunity to go out and work as a laborer. Do the laborers have a separate category in the union from the hod carriers? [288] A. That is correct.

Q. Do you have a separate list that you put the laborers on who are seeking employment, as compared to hod carriers?

A. You register the laborers; the hod carriers you keep track of them in your head by the district they live in, the length of time they have been out of work.

Q. But you don't have any separate list for hod carriers? A. No, sir.

Q. I believe Mr. Buchanan testified there were about 70, you had about 70 hod carriers enrolled there, or who worked out of the union.

(Testimony of Leo Allman.)

A. I would say in that vicinity, yes.

Q. And about 1,700 laborers. A. Correct.

* * * * *

Q. Were there jobs as a laborer that you could have sent him out on if he had wanted to go out as a laborer? A. Yes.

Q. Up until the 11th of May 1956 were there any hod carrier jobs available in the union that had come up when he came down, any particular day that he had come down there [289] seeking work, were there any hod carrier jobs available that you could have sent him out on?

A. I don't believe so, sir.

Trial Examiner: Actually, do you know?

The Witness: Well, as I said before, the work was pretty scattered, contractors were calling their own men back. As far as there was any work, no.

Q. (By Mr. Jackson): Do you have any recollection now of any time during March and April and up to the 11th of May that there were any hod carrier jobs available in the union office on any one of those mornings that Mr. Lewis came in seeking work as a hod carrier? A. No, there wasn't.

Trial Examiner: Did you send any people out on those days?

The Witness: Men that the contractors, just like I stated before, the contractors were calling their men back that had worked for them before, they were calling up and wanting to know their addresses or phone numbers so they could call them back to work.

(Testimony of Leo Allman.)

Trial Examiner: I am not referring to that. Did you send any man out?

The Witness: No, sir.

Trial Examiner: Or did the union dispatch any men to any jobs on any day when Mr. Lewis was in the office in the period mentioned by counsel, looking for a job as a hod carrier? [290]

The Witness: No, sir.

Q. (By Mr. Jackson): That is up to May 11, 1956, is that correct? A. Yes, sir.

Q. I believe Mr. Lewis said that he was in the office on May 9 seeking work. Was there any work as a hod carrier, to your knowledge, in the union office on May 9?

A. It's pretty hard to remember these dates that far back.

Q. That was the day that he went out to, if you will recall his testimony, that he went out and worked for Mr. Nielsen, and got this job.

A. No, sir.

Q. Your answer is that there were no hod carrier jobs available that morning?

A. That is correct.

* * * * *

Q. When did the hod carrier jobs in the union office start opening up in 1956? When was the first available jobs that you had for the hod carriers, that you could send out?

A. Well, as far as I can remember, Mr. Lewis went out on about the first job I had.

Trial Examiner: That isn't the question. Counsel

(Testimony of Leo Allman.)

asked you — perhaps you will come to the other thing later — when did the jobs start opening up? That is all he wants to know at the [291] present time.

A. In May of this year.

Q. (By Mr. Jackson): About what time?

A. I would say around the middle part of May.

Q. Do you remember about the first job that opened up where you had a demand for hod carriers?

A. Approximately the first — you are talking about plaster jobs, I imagine?

Q. Which he would qualify for.

A. Well, I think the first job I got in was for a man by the name of Marius Landrus in the vicinity of, I don't remember the exact address, it was, I believe, on Ninety-fourth close to Sand Point Country Club.

Q. Was that a job Mr. Lewis was sent out on?

A. Yes, sir. [292]

* * * * *

Q. (By Mr. Jackson): Was there anything done by you or Mr. Buchanan there in the union office, between the months of March and April and up to May 11th—— A. No, sir.

Q. Just a minute, now. (Continuing) ——that in any way prevented Mr. Cyrus Lewis from getting a job from the union? [295]

* * * * *

A. No, sir. [296]

* * * * *

(Testimony of Leo Allman.)

Q. I say, is there anything that you or Mr. Buchanan did in the office there at the union during those months, from March up until June 30, that prevented Mr. Lewis from obtaining a job through the union as a hod carrier?

A. Not that I know of, no, sir.

Q. You said jobs began opening up around the 15th or after the 15th of May, 1956, and then Mr. Lewis was sent out on a job about May 17, 1956. Following that, was he referred out to jobs as a hod carrier when jobs were available in the union office?

A. Yes, sir.

Q. Has he been referred to jobs as a hod carrier since that time up to the present? A. Yes, sir.

Q. I believe you said that employers who used hod carriers had called in to the union and asked for special men. A. That is correct.

Q. What has been the practice of the union when they ask for a man by name? [297]

A. To send him out.

Q. Has that practice been in existence ever since you have been there at the union?

A. Ever since I have been in office, yes.

* * * * *

Q. Do you remember the testimony of Mr. Lewis with respect to a job he testified to here this morning which he claimed had come in from Todd's Shipyard, seeking a hod carrier?

A. Yes, I believe I do.

Q. Do you remember that occasion?

(Testimony of Leo Allman.)

A. I remember the occasion. I couldn't tell you the date, by any means.

Q. Would you tell us what the job was for.

A. The job was for a boiler aboard ship.

Q. What was the call for?

A. I believe Mr. Buchanan took the order, turned it over to me, and this was his words, he said that a contractor had called up and said he had four first-class hod carriers but they were all big, to send him a small man. May I go on? [298]

* * * * *

A. Down at the bottom of a boiler, especially these boilers, there is a small opening, what they call an acid hole. That is very small and it takes a very small man to get inside there. He has to take care of the bricklayer, after the bricklayer is inside, he has to give him the material. I am not a very big man myself, and at this present time I don't think that I could get in one of those holes. It takes a man of not much over a hundred and fifty pounds, or 155 pounds at the most, to be able to squeeze through there.

Q. (By Mr. Jackson): Then, when the call came in, this was a morning that Mr. Lewis has testified that a Mr. Johnson was sent down when this job came in from Todd's, to Todd's. Would you go on and explain whether or not Mr. Lewis had asked for the job and why you didn't give the job to Mr. Lewis.

A. Well, I didn't give the job to Mr. Lewis for this reason, that it took a small man to get into the

(Testimony of Leo Allman.)

boiler, as I stated before, and the contractor had specified that he wanted a small man, as I already stated, he had four men to take the material off of the ship into the hold, he needed a small man in the boiler to tend the bricklayers inside. That was the reason for Mr. Johnson's appointment to that job.

Q. How large a man was Mr. Johnson?

A. Do you want his height and description?

Q. Well, yes, give us his description, his weight and—— [299]

A. Well, I don't, Mr. Johnson is a man approximately five foot seven or eight, I imagine he is, I don't believe he would tip the scales at over 150 pounds at the most.

Q. That is, he is what you could call a small man?

A. He is what you would call a small, wiry man.

Q. As compared to Mr. Lewis, how do you classify Mr. Lewis?

A. Mr. Lewis would make two of him.

Trial Examiner: What do you estimate Mr. Lewis' weight to be?

* * * * *

The Witness: I would say he weighed around 225 pounds.

Trial Examiner: And you estimate his height was what?

The Witness: Well, I know he is taller than I am.

Trial Examiner: And you are what?

The Witness: I am six foot.

(Testimony of Leo Allman.)

Q. (By Mr. Jackson): Mr. Lewis has testified that you came out looking for a hod carrier that morning, out of the office looking for a hod carrier. Is that the reason that you came out looking for a hod carrier, you were looking for a small man?

A. That is correct.

Q. Then Johnson was dispatched to that job?

A. Yes, sir.

* * * * *

Trial Examiner: What was the reason you dispatched Mr. Johnson rather than Mr. Lewis?

The Witness: The contractor had asked specifically for a small man to get through this acid hole in the boiler.

Trial Examiner: And that was your reason?

The Witness: That is correct.

* * * * *

Q. (By Mr. Jackson): Mr. Allman, Mr. Lewis also stated that he had asked to join the union and that you had—I believe he said he had asked to join the union before he had filed the [301] charges and then he also asked to join the union after he filed the charges. Would you just tell us what the fact is regarding that and the reason, whether or not there is a reason why he wasn't permitted to be reinstated?

A. Well, yes, there is a reason. [302]

* * * * *

Q. (By Mr. Jackson): When he first came in, what month was it, to your knowledge, that he

(Testimony of Leo Allman.)

sought, asked you about joining the union, wanted to pay some dues, as he has testified?

A. The months, that is something I couldn't answer.

Q. Well, approximately when was it?

Trial Examiner: Was it before the charge was filed?

A. I don't know whether it was the last part of April or in May.

* * * * *

Q. (By Mr. Jackson): What was said, if you recall?

A. Mr. Lewis came in and wanted to rejoin the organization and, if I remember right, I told him that he would need his money to eat on, if I am not mistaken.

* * * * *

Q. Let me ask you this, were you taking any new members in during this slack period?

A. No, sir, we didn't have enough work for the —we didn't have any work. We had no work for new men. [303]

* * * * *

Q. When was the next time that you had any conversation with Mr. Lewis about becoming a member of the union? Was that after——

A. It would be after the charges were filed. [304]

Q. (By Mr. Jackson): I asked you if you had had any other discussions with Mr. Lewis about joining the union and you said yes, about the time that this slip was made out.

(Testimony of Leo Allman.)

A. On this date.

Q. On August 18. And what was your discussion at that time?

A. Mr. Lewis came down and wanted to join the organization. [305]

* * * * *

Q. And what was said, what happened then, what was said between you and him?

A. I asked him if he would withdraw the charges, that I would give him a card that was, that would act as a, to show my good faith, I would give him a card that would act as a book.

Q. And you gave him this slip?

A. That is correct.

Trial Examiner: Why would he need a book from you, to work somewhere?

The Witness: He seemed to want a union book. You don't need a union book to work anyplace.

* * * * *

Trial Examiner: And what was your answer to him when he asked you if he could join? That is the question.

The Witness: I asked him if he would withdraw the charges.

Trial Examiner: And what did he say?

The Witness: Well, that is quite a ways back. It is pretty hard for me to remember. [307]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Boyd): You referred to the slack period in the spring, when work was slack in the

(Testimony of Leo Allman.)

spring months of this year. May I restate the question, then. Such work as you had available to dispatch men to in hod carrier jobs during the slack months of this spring, where they were not being called for specifically by name, was given to the men who had full membership in your union, isn't that true?

A. I don't recall of any of them, any jobs coming in at that time that wasn't being called for by name, because the contractors were starting back to work.

Q. The Todd job was not called for by name, was it? A. Well, that was——

Q. The Des Moines job wasn't being called for by name, was it? [319]

A. No, sir, not those two.

* * * * *

Q. (By Mr. Boyd): But nevertheless, those jobs that you referred to in your testimony, the hod carriers were not called for by name, were they.

A. Which particular jobs was that?

Q. Where you sent a man to the telephone building at Des Moines and where you sent a man to the Todd Shipyard.

A. The transportation facilities enters into who went to Des Moines. And the size of the——

Q. (Interrupting) It is a matter of getting on a public bus, isn't it, to go to Des Moines?

A. How long does it take to go to Des Moines? Isn't it an hour and a half? [320]

* * * * *

(Testimony of Leo Allman.)

Redirect Examination

Q. (By Mr. Jackson): In sending men out to suburban areas, a lot depends on when the buses run, isn't that correct? A. That is correct.

Q. And the object is, when a man is dispatched in the morning, is to get him out there?

A. That is right.

Q. Is that correct?

A. That is our obligation.

Q. And it is a matter of dispatching the man that can get there the quickest?

A. That is correct.

Trial Examiner: Are you aware of any requirement of your union which requires you to give preference in dispatch to a member of the union over any non-member? [322]

* * * * *

The Witness: May I answer it in my own words?

Trial Examiner: Yes.

The Witness: In this respect, in your oath of obligation, it states in your oath of obligation that you will secure employment for union people above all others, I believe.

Trial Examiner: Were you complying with that obligation during the time that Lewis was applying for jobs?

The Witness: How do you mean?

Trial Examiner: Were you complying with this obligation that is imposed upon you?

(Testimony of Leo Allman.)

The Witness: It's the international constitution and you have no choice but to——

Mr. Boyd: That is to say, you had no choice but to comply with the requirements of the international constitution?

The Witness: Well, if you are going to be an official of the organization, you have to comply with the international constitution.

Trial Examiner: Let me ask you this, then. At any time when Mr. Lewis was in the office applying for a job, for dispatch, did you ever on any occasion dispatch a member in preference to him because Lewis was a non-member? [323]

The Witness: No, sir.

Trial Examiner: Did you have any occasion to do that?

The Witness: No, sir, not as I can recall. [324]

* * * * *

Recross Examination * * * * *

Q. (By Mr. Boyd): But you did follow the past practice of the union of dispatching first your full members to such work as was available?

A. I followed the practice of dispatching the first man in, that is, the first man off of, out of work was the first man out.

Trial Examiner: However, what do you mean by "the first man"? Do you mean the first member or do you mean the first individual, irrespective of whether he was a member?

The Witness: I mean the first hod carrier out of a job was the first man out, to go to work.

(Testimony of Leo Allman.)

Trial Examiner: Well, weren't you following the international's constitution?

The Witness: What do you mean?

Trial Examiner: Doesn't the international constitution require you to give preference to a member, in dispatching him?

The Witness: I think that—I didn't say that I was putting out members before Mr. Lewis. I said that they were all taking their turn.

Trial Examiner: Whether or not they were members?

The Witness: If I remember correctly, there was only one other man around there who was working as a hod carrier, that [327] was not a member.

Trial Examiner: But my question is, were they taking their turns whether or not they were members or were they taking their turn as members and after you dispatched them, then you would send out the non-members? Which was it?

The Witness: They were taking their turn, period. [328]

* * * * *

Mr. Jackson: I think you said, though, "Didn't you know that during the months of May and June we had one of the driest summers up here that we have had for some period of time?" That, in substance, was what you said.

Trial Examiner: I was addressing myself to the heat, sir.

Mr. Jackson: That is the reason, as I say, all I

am trying to do is clarify it, if your Honor has that in mind, because June was a wet month here, and I submit, if June was a wet month, it would have some bearing on the hod carriers that would be working.

Trial Examiner: At the present time there is no evidence in the record either way because the witness, in effect, didn't know. [329]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 4

Western Washington District Council, International Hod Carriers, Building and Common Laborers of America—1956-1957-1958.

Agreement

* * * * *

Territory and Work Covered

5. This Agreement shall cover all Building, Heavy and Highway Construction in the following fifteen counties of the State: Whatcom, Skagit, Snohomish, King, Pierce, Thurston, Lewis, Pacific, Grays Harbor, Clallam, Jefferson, Mason, Kitsap, Island and San Juan.

Recruitment of Employers

6. To maintain employment, to preserve workable labor relations, to proceed with private and public work, the following accepted prevailing practices shall continue to prevail in the hiring of workmen:

(a) The recruitment of employees shall be the responsibility of the Union and it shall maintain

General Counsel's Exhibit No. 4—(Continued)

offices or other designated facilities for the convenience of the Employers when in need of employees and for workmen when in search of employment.

(b) The Employers will call upon the Local Union in whose territory the work is to be accomplished to furnish qualified workmen in the classifications herein contained.

(c) Should a shortage of workmen exist and the Employer has placed orders for men with the Union, orally or written, and they cannot be supplied by the Union within forty-eight (48) hours, Saturdays, Sundays and holidays excluded, the Employer may procure workmen from other sources.

(d) Either party to this Agreement shall have the right to reopen negotiations pertaining to Union security by giving the other party thirty (30) days written notice, when there is reason to believe that the laws pertaining thereto have been changed by Congressional Amendments, Court Decisions, or governmental regulations.

* * * * *

34. For the good of the industry both parties pledge their immediate cooperation to eliminate any of the above mentioned possibilities and the following procedure is outlined for that purpose:

(a) In the event that a dispute arising on the job cannot be satisfactorily adjusted on the job between the Local or Locals involved and the Employer or his Representative, the same shall be referred to the Business Representative of the Dis-

General Counsel's Exhibit No. 4—(Continued)

trict Council and the Manager of the Chapter of the Associated General Contractors of America, Inc., in whose territory or under whose jurisdiction the dispute arises.

(b) Should the Business Representative of the District Council and the Manager of the Chapter in whose territory or under whose jurisdiction the dispute arises fail to effect a settlement, they shall refer same to a joint arbitration committee consisting of two members designated by the Employer, two members of the District Council. Should these four fail to reach an agreement, a fifth representative shall be chosen by them. Any decision of the Board shall be within the scope and terms of this Agreement. Decisions by this Board shall be rendered within twenty (20) days after the grievance is submitted to them.

(c) The parties hereby agree that such decision of the Joint Arbitration Board shall be final and binding upon both parties.

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Schedule A

The Wage Rates in Schedule Below Shall Become Effective January 1, 1956, and Shall Remain in Effect Until December 31, 1957.

* * * * *

Mortarmen and Hod Carriers....2.67 2.81

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Certificate

This is to certify that the attached proceedings before the National Labor Relations Board for the 19th Region in the matter of: Mountain Pacific Chapter, Seattle and Tacoma Chapters, Associated General Contractors of America, Inc., and International Hod Carriers, Building and Common Laborers Union, Local No. 242, AFL-CIO, and Western Washington District Council, International Hod Carriers, Building and Common Laborers of America, and Cyrus Lewis, Cases 19-CA-1374, 19-CB-424 and 19-CB-445, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

ACME REPORTING COMPANY,
Official Reporters,

/s/ By VERNON W. SELLER,
Field Reporter.